

CUSTOMS BULLETIN AND DECISIONS

***Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
Bureau of Customs and Border Protection
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade***

VOL. 40

FEBRUARY 8, 2006

NO. 7

This issue contains:

Bureau of Customs and Border Protection

General Notices

U.S. Court of International Trade

Slip Op. 06-10

Slip Op. 06-12 Through 06-14

**DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

Please visit the U.S. Customs and Border Protection
Web at: <http://www.cbp.gov>

Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 9 2005)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of September 2005. The last notice was published in the CUSTOMS BULLETIN on October 19, 2005.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: January 11, 2006.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

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CUSTOMS BULLETIN AND DECISIONS, VOL. 40, NO. 7, FEBRUARY 8, 2006

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR NSK	OWNER NAME	RES
CP05000110	20050907	20250907	SERIAL NUMBER 9601501	JEAN CARD GIFT CO., LTD.	N
CP05000111	20050907	20250907	SERIAL NUMBER 9399511	JEAN CARD GIFT CO., LTD.	N
CP05000112	20050907	20250907	SERIAL NUMBER 9399507	JEAN CARD GIFT CO., LTD.	N
CP05000113	20050907	20250907	SERIAL NUMBER 9399505	JEAN CARD GIFT CO., LTD.	N
CP05000114	20050907	20250907	SERIAL NUMBER 9399507	JEAN CARD GIFT CO., LTD.	N
CP05000115	20050907	20250907	SERIAL NUMBER 9399330	JEAN CARD GIFT CO., LTD.	N
CP05000116	20050907	20250907	SERIAL NUMBER 9399206	JEAN CARD GIFT CO., LTD.	N
CP05000117	20050907	20250907	SERIAL NUMBER 9399202	JEAN CARD GIFT CO., LTD.	N
CP05000118	20050907	20250907	SERIAL NUMBER 9601401	JEAN CARD GIFT CO., LTD.	N
CP05000119	20050907	20250907	SERIAL NUMBER 9601401	JEAN CARD GIFT CO., LTD.	N
CP05000120	20050907	20250907	SERIAL NUMBER 9601704	JEAN CARD GIFT CO., LTD.	N
CP05000121	20050907	20250907	SERIAL NUMBER 9601401	JEAN CARD GIFT CO., LTD.	N
CP05000122	20050907	20250907	SERIAL NUMBER 9399408	JEAN CARD GIFT CO., LTD.	N
CP05000123	20050907	20250907	SERIAL NUMBER 9399508	JEAN CARD GIFT CO., LTD.	N
CP05000124	20050907	20250907	SERIAL NUMBER 9703901	JEAN CARD GIFT CO., LTD.	N
CP05000125	20050907	20250907	SERIAL NUMBER 9703901	JEAN CARD GIFT CO., LTD.	N
CP05000126	20050907	20250907	BVLGARI 2005 SUNGLASS COLLECTION	BULGARI S.P.A.	N
CP05000127	20050907	20250907	BVLGARI 2005 OPTHALMIC & SUNGLASS UPDATE	BULGARI S.P.A.	N
CP05000128	20050909	20250909	2006 FIFA WORLD CUP GERMANY EMBLEM	FEDERATION INTERNATIONALE DE	N
CP05000129	20050913	20250913	GRACEFUL DEER STANDING	SANDRA ZINNICKI	N
CP05000130	20050913	20250913	HOLLY ROPE LIGHT GARLAND	SANDRA ZINNICKI	N
CP05000131	20050913	20250913	HOLLY ROPE LIGHT GARLAND	SANDRA ZINNICKI	N
CP05000132	20050913	20250913	CANDY CANE ROPE LIGHT GARLAND	SANDRA ZINNICKI	N
CP05000133	20050913	20250913	STAR ROPE LIGHT GARLAND	SANDRA ZINNICKI	N
CP05000134	20050913	20250913	PRE-LIT TINSEL GARLAND	SANDRA ZINNICKI	N
CP05000135	20050913	20250913	LIGHTED BEAD GARLAND	SANDRA ZINNICKI	N
CP05000136	20050913	20250913	GRACEFUL DEER RUNNING	SANDRA ZINNICKI	N
CP05000137	20050913	20250913	GRACEFUL DEER LEAPING	SANDRA ZINNICKI	N
CP05000138	20050913	20250913	GRACEFUL DEER LYING DOWN	SANDRA ZINNICKI	N
CP05000139	20050913	20250913	SPIRAL POLE TREE MADE WITH PRE-LITE TINSEL GARLAND	SANDRA ZINNICKI	N
CP05000140	20050913	20250913	ANIMATED ROPE LIGHT SANTA WITH TEDDY BEAR	SANDRA ZINNICKI	N
CP05000141	20050913	20250913	GRACEFUL DEER EATING	SANDRA ZINNICKI	N
CP05000142	20050913	20250913	GRACEFUL DEER EATING	SANDRA ZINNICKI	N
CP05000143	20050913	20250913	BVLGARI-2004 OPTHALMIC UPDATE	BULGARI S.P.A.	N
CP05000144	20050920	20250920	MAMA	DIC ENTERTAINMENT CORPORATION	N
CP05000145	20050929	20250929	RUBY TROLLMAN	DIC ENTERTAINMENT CORPORATION	N
CP05000146	20050929	20250929	SAPPHIRE TROLLZAMA	DIC ENTERTAINMENT CORPORATION	N
CP05000147	20050929	20250929	ONYX TROLLBERG	DIC ENTERTAINMENT CORPORATION	N
CP05000148	20050929	20250929	AMETHYST VAN DER TROLL	DIC ENTERTAINMENT CORPORATION	N
CP05000149	20050929	20250929			N
SUBTOTAL RECORDATION TYPE			40		
THK0500757	20050901	20150308	19	TRUCK-LITE CO., INC.	N
THK0500758	20050906	20120323	CATERPILLAR	CATERPILLAR INC.	N
THK0500759	20050906	20101111	CATERPILLAR	CATERPILLAR INC.	N
THK0500760	20050906	20140602	CATERPILLAR	CATERPILLAR INC.	N
THK0500761	20050906	20140602	CATERPILLAR	CATERPILLAR INC.	N
THK0500762	20050906	20110116	CATERPILLAR	CATERPILLAR INC.	N

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REC NUMBER	EXP DT	EFF DT	NAME OF COP, THK, TMM OR MSK	OWNER NAME	RES
TKM0500812	20131202	20050908	PHASER	XEROX CORPORATION	N
TKM0500813	20150322	20050908	PHASER	XEROX CORPORATION	N
TKM0500814	20150322	20050908	XEROX	XEROX CORPORATION	N
TKM0500815	20130616	20050908	DEMIM 24/7	REDCATS USA, L.P.	N
TKM0500816	20150125	20050908	CHICAGO (STYLIZED)	CHICAGO WHITE SOX, L.P.	N
TKM0500817	20150226	20050908	CHICAGO (STYLIZED)	CHICAGO WHITE SOX, L.P.	N
TKM0500818	20090711	20050908	SOX (STYLIZED)	CHICAGO WHITE SOX, L.P.	N
TKM0500819	20121222	20050908	GREEN MONSTER	CHICAGO WHITE SOX, L.P.	N
TKM0500820	20091107	20050908	DETROIT (STYLIZED)	DETROIT TIGERS, INC.	N
TKM0500821	20100508	20050908	D (STYLIZED)	DETROIT TIGERS, INC.	N
TKM0500822	20100523	20050908	ASTRO DESIGN (WING)	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500823	20100523	20050908	ASTRO DESIGN	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500824	20100109	20050908	45S AND DESIGN	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500825	20050908	20050908	ASTRO AND DESIGN	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500826	20150125	20050908	COLTS AND DESIGN (GUN)	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500827	20121026	20050908	DESIGN ONLY CORLEO WEARING A BASEBALL CAP	HOUSTON MCCLANE COMPANY, INC.	N
TKM0500828	20100619	20050908	DETROIT (STYLIZED)	BALTIMORE ORIOLES LIMITED	N
TKM0500829	20100619	20050908	GOALS, BALTIMORE (STYLIZED)	BALTIMORE ORIOLES LIMITED	N
TKM0500830	20110501	20050912	DESIGN ONLY	BALTIMORE ORIOLES LIMITED	N
TKM0500831	20130323	20050912	DESIGN ONLY	PADRES, L.P.	N
TKM0500832	20100703	20050912	PHILLIES AND DESIGN	PHILLIES, L.P.	N
TKM0500833	20060113	20050912	DESIGN ONLY	PHILLIES, L.P.	N
TKM0500834	20050916	20050916	EVIL ANGEL (STYLIZED)	MINNESOTA TWINS	N
TKM0500835	20050926	20050926	EVIL ANGEL	MINNESOTA TWINS	N
TKM0500836	20130107	20050919	DESIGN ONLY	JOHN STAGLAND, INC.	N
TKM0500837	20140621	20050919	SPAL & DESIGN	ESCADA AG	N
TKM0500838	20150627	20050919	KONICA (STYLIZED)	SPAL S.R.L.	N
TKM0500839	20120730	20050920	VIADER	KONICA MINOLTA HOLDINGS, INC.	N
TKM0500840	20090125	20050920	ATLANTA NATIONAL LEAGUE BASEBALL CLUB LTD	VIADER VINEYARDS	N
TKM0500841	20111230	20050920	ATLANTA NATIONAL LEAGUE BASEBALL CLUB LTD	ATLANTA NATIONAL LEAGUE BASEBALL CLUB LTD	N
TKM0500842	20050920	20050920	M DESIGN-ORANGE SLICE	MONSTER CABLE PRODUCTS INC.	N
TKM0500843	20100904	20050920	MONSTER	MONSTER CABLE PRODUCTS INC.	N
TKM0500844	20080825	20050920	WR	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500845	20080825	20050920	G LUMINATOR	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500846	20050920	20050920	TELEMEMO	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500847	20050920	20050920	G	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500848	20050920	20050920	G	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500849	20150219	20050920	DATA BANK	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500850	20080124	20050920	HOLFPACK	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500851	20131129	20050920	SOX UN	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500852	20130611	20050920	SOX UN	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500853	20110430	20050920	MISCELLANEOUS DESIGN (BROWNIE ELF)	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500854	20140907	20050920	PIRATES AND DESIGN	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500855	20120303	20050920	NEW YORK (STYLIZED LETTERING)	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500856	20120303	20050920	SO BASIC TEE	CASIO KEISANKI KABUSHIKI KAISHA	N
TKM0500857	20120730	20050920	RED PAINT	N.C.T. STATE UNIVERSITY AT CALIEIGH	N
TKM0500858	20050920	20050920	RED PAINT	CHICAGO WHITE SOX, L.P.	N
TKM0500859	20120806	20050920	XO VISION	CHICAGO WHITE SOX, L.P.	N
TKM0500860	20120806	20050920	XO VISION	CHICAGO WHITE SOX, L.P.	N

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REC NUMBER	EFF DT	EXP DT	NAME OF CDP, TMK, TMM OR MSK	OWNER NAME	RES
THK0500861	20050920	20160422	CROSSROADS	SPECIALIZED BICYCLE COMPONENTS	N
THK0500862	20050920	20150423	DONKEY KONG	NINTENDO OF AMERICA INC.	N
THK0500863	20050920	20150423	SKILL	UREDO TECHNOLOGY CORPORATION	N
THK0500864	20050920	20150423	SKILL	UREDO TECHNOLOGY CORPORATION	N
THK0500865	20050920	20140413	CIALIS TABLET	LILLY ICOS L.L.C.	N
THK0500866	20050920	20140116	CIALIS LOGO	LILLY ICOS L.L.C.	N
THK0500867	20050921	20060520	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500868	20050921	20070208	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500869	20050921	20070208	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500870	20050921	20050322	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500871	20050921	20091130	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500872	20050921	20060520	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500873	20050921	20080811	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL	N
THK0500874	20050922	20070610	REFRON & DESIGN	REFRON, INC.	N
THK0500875	20050922	20070610	REFRON & DESIGN	REFRON, INC.	N
THK0500876	20050922	20150423	REFRON & DESIGN	REFRON, INC.	N
THK0500877	20050922	20150423	REFRON & DESIGN	REFRON, INC.	N
THK0500878	20050928	20150611	DESIGN ONLY (CONFIGURATION OF A TRIPLE BEAM BALANCE)	CHAUSS CORPORATION	N
THK0500879	20050929	20150528	POSTURE	INVERNESS MEDICAL, INC.	N
THK0500880	20050929	20150607	INFRAGISTICS & DESIGN	INFRAGISTICS, INC.	N
THK0500881	20050929	20140913	INFRAGISTICS & DESIGN	INFRAGISTICS, INC.	N
THK0500882	20050929	20140913	INFRAGISTICS & DESIGN	INFRAGISTICS, INC.	N
THK0500883	20050929	20140928	INFRAGISTICS	INFRAGISTICS, INC.	N
THK0500884	20050929	20150312	FRY GUY	INFRAGISTICS, INC.	N
THK0500885	20050929	20131007	TALKING TP	MC DONALD'S CORPORATION	N
THK0500886	20050929	20120616	MC DESIGN	SPITFIRE VENTURES INC.	N
THK0500887	20050929	20051018	MONSTER CABLE	MONSTER CABLE PRODUCTS INC.	N
THK0500888	20050929	20051018	MONSTER CABLE	MONSTER CABLE PRODUCTS INC.	N
THK0500889	20050929	20050920	MONSTER CABLE	MONSTER CABLE PRODUCTS INC.	N
THK0500890	20050929	20110925	THE TINGLER	MONSTER CABLE PRODUCTS INC.	N
THK0500891	20050930	20121130	CHERRY STIX	LACEY, DWAYNE	N
THK0500892	20050930	20150131	KING COBRA	CHERRY STIX LTD.	N
THK0500893	20050930	20150131	KING COBRA	CHERRY STIX LTD.	N
THK0500894	20050930	20140519	KEYLEIST (SCRIPT)	ACUSHNET COMPANY	N
THK0500895	20050930	20080512	MINI MEXX	ACUSHNET COMPANY	N
THK0500896	20050930	20080512	MINI MEXX	MEXX INTERNATIONAL B.V.	N
THK0500897	20050930	20080512	MEXX	MEXX INTERNATIONAL B.V.	N
THK0500898	20050930	20080512	MEXX	MEXX INTERNATIONAL B.V.	N
THK0500899	20050930	20080512	MEXX	MEXX INTERNATIONAL B.V.	N

SUBTOTAL RECORDATION TYPE 139

TOTAL RECORDATIONS ADDED THIS MONTH 179

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TRADE NAME RECORDATIONS**

(No. 10 2005)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of October 2005. The last notice was published in the CUSTOMS BULLETIN on October 19, 2005.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: January 11, 2006.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

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REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
CP0500110	20051007	20251007	EICHI HOSOMI-NOVEMBER 2001 COLLECTION	TRENDTEX FABRICS, LTD.	N
CP0500111	20051007	20251007	STUDIO HIRO-JULY 2001 COLLECTION	TRENDTEX FABRICS, LTD.	N
CP0500112	20051007	20251007	EICHI HOSOMI-NOVEMBER 2003 COLLECTION	TRENDTEX FABRICS, LTD.	N
CP0500113	20051012	20251012	ROCK TROLLHAMMER	DIC ENTERTAINMENT CORPORATION	N
CP0500114	20051012	20251012	FLINT TROLLHAMMER	DIC ENTERTAINMENT CORPORATION	N
CP0500115	20051012	20251012	ALABASTER TROLLINGTON III	DIC ENTERTAINMENT CORPORATION	N
CP0500116	20051012	20251012	FLIZZY	DIC ENTERTAINMENT CORPORATION	N
CP0500117	20051012	20251012	JASPER TROLLHOUN	DIC ENTERTAINMENT CORPORATION	N
CP0500118	20051012	20251012	COAL TROLLWELL	DIC ENTERTAINMENT CORPORATION	N
CP0500119	20051012	20251012	SIMON THE GREHLIN	DIC ENTERTAINMENT CORPORATION	N
CP0500120	20051012	20251012	SHARP TROLLHOPPER	DIC ENTERTAINMENT CORPORATION	N
CP0500121	20051012	20251012	BEL VEDERE VODKA BOTTLE	ZYVARDONSKYE ZAKLADY PRECHVY	N
CP0500122	20051012	20251012	KR0022 BLACK LEGION BATTLE AXE	UNITED CUTLERY CORPORATION	N
CP0500123	20051012	20251012	UC1404 TRITON'S BLADE	BEST-TEAM INTERNATIONAL CORP.	N
CP0500124	20051012	20251012	BUTTERFLY		N
SUBTOTAL RECORDATION TYPE 17					
TK0500896	20051003	20150215	HOME SPEC	QINTAR TECHNOLOGIES, INC.	H
TK0500897	20051003	20140122	KING SIZE	REDCATS USA, L.P.	N
TK0500898	20051003	20110213	ONLY NECESSITIES & DESIGN	REDCATS USA, L.P.	N
TK0500899	20051003	20120924	ATANEL	ANTROL, INC.	N
TK0500900	20051003	20150765	RUE CAMBON	CHANEL, INC.	N
TK0500901	20051003	20140110	FURLA	FURLA U.S.A., INC.	N
TK0500902	20051003	20130114	FURLA	FURLA U.S.A., INC.	N
TK0500903	20051003	20130114	FURLA	FURLA U.S.A., INC.	N
TK0500904	20051005	20091208	FRITOS	FRITO-LAY NORTH AMERICA, INC.	N
TK0500905	20051007	20150125	HMS BOUNTY & DESIGN	PREFERRED COMPUTER TRADING CORP.	N
TK0500906	20051007	20130118	FRITAGS	ACUSHNET COMPANY	N
TK0500907	20051007	20130518	FOOTJOY	ACUSHNET COMPANY	N
TK0500908	20051007	20080609	FOOTJOY	ACUSHNET COMPANY	N
TK0500909	20051007	20121126	KAFFE COFFEE MINAS KAFKA CAFE HLJEVENA MINAS	MINAS-FEINKOST GMBH	N
TK0500910	20051007	20080912	A FILLED TRANSPARENT BOX WITH OVERLAP LABEL	FERRERO S.P.A.	N
TK0500911	20051007	20120820	UNAREX	UNAREX SPORTWAFEN GMBH & CO. KG	N
TK0500912	20051007	20120625	SHARP	SHARP CORPORATION	N
TK0500913	20051007	20060918	SHARP	SHARP CORPORATION	N
TK0500914	20051007	20140406	AQUOS	SHARP CORPORATION	N
TK0500915	20051007	20140406	SHARP	SHARP CORPORATION	N
TK0500916	20051007	20150208	SCREAMING EAGLE	ARLIE JEAN PHILLIPS	N
TK0500917	20051007	20120625	MIRACLE	LANCONE PARFUMS ET BEAUTE & CIE	N
TK0500918	20051007	20140125	TRESOR	LANCONE PARFUMS ET BEAUTE & CIE	N
TK0500919	20051007	20140125	TRESOR	LANCONE PARFUMS ET BEAUTE & CIE	N
TK0500920	20051007	20070923	POEME	LANCONE PARFUMS ET BEAUTE & CIE	N
TK0500921	20051007	20120421	RAMPARTS	GORGAN-RUPP COMPANY	N
TK0500922	20051007	20130916	UFFIZI	PRIMA ROYALE ENTERPRISES	N
TK0500923	20051012	20150727	DURACELL	THE GILLETTE COMPANY	N
TK0500924	20051012	20160413	GILLETTE	THE GILLETTE COMPANY	N

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REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNH OR MSK	OWNER NAME	RES
TK0500025	20051012	20150727	FRAMYN OF STYLIZED G	THE SILLETTE COMPANY	N
TK0500026	20051012	20150727	BOTTLE DEVICE (NL)	BURGARI S.P.A	N
TK0500028	20051012	20150712	DESIGN ONLY	ROLLESE, INC.	N
TK0500029	20051012	20150503	AB LOUNGE	FITNESS QUEST, INC.	N
TK0500030	20051012	20150328	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL	N
TK0500031	20051012	20141211	SLAYDOWN AUTOMATIC PISTOL DESIGN	GLOCK INC.	N
TK0500032	20051012	20091130	NANDO'S CHICKENLAND	NANDO'S INTERNATIONAL LTD.	N
TK0500033	20051012	20150427	ACCUSURE	QUALITEST PHARMACEUTICALS, INC.	N
TK0500034	20051012	20140921	BEAR'S HEAD LOGO	CARTE BLANCHE GREETINGS LIMITED	N
TK0500035	20051012	20150531	CRAZY HORSE (STYLIZED)	L.C. LICENSING, INC.	N
TK0500036	20051012	20150506	BMW	GIANNANCO FERRE S.P.A	N
TK0500037	20051012	20070303	EXCEDE	PHARMACIA & UPJOHN COMPANY LLC	N
TK0500038	20051012	20150111	COINTREAU AND BOTTLE DESIGN	COINTREAU CORPORATION	N
TK0500041	20051012	20150416	TV-RAP	THOMAS & BETTS	N
TK0500042	20051012	20150627	DESIGN ONLY (FACE OF HELLO KITTY)	QUESTECH CORPORATION	N
TK0500043	20051012	20150515	DESIGN ONLY (STYLIZED)	QUESTECH CORPORATION	N
TK0500044	20051012	20150409	QUESTECH	GMB, INC.	N
TK0500045	20051012	20150414	STYLIZED REPRESENTATION OF A CAMEL	TWO-PRODUCTS INC.	N
TK0500047	20051012	20160113	TABLE-MATE	QUESTECH CORPORATION	N
TK0500048	20051012	20060507	TABLE-MATE & DESIGN	QUESTECH CORPORATION	N
TK0500049	20051012	20150815	CATMAN DESIGN (TRIANGLE)	CATERPILLAR INC.	N
TK0500051	20051012	20150811	GIANTS & BASEBALL DESIGN	SAN FRANCISCO BASEBALL ASSOCIATE	N
TK0500052	20051012	20080714	PROFORCE	PROTEAM, INC.	N
TK0500053	20051012	20100201	SUPER COACH	HARMONY GOLD USA INC.	N
TK0500054	20051012	20140127	ROBOTECH	THE NORTH FACE APPAREL CORP.	N
TK0500055	20051012	20150116	THE NORTH FACE AND DESIGN	THE NORTH FACE APPAREL CORP.	N
TK0500056	20051012	20150116	CONVERSABLE	THE NORTH FACE APPAREL CORP.	N
TK0500057	20051012	20140514	THE NORTH FACE	CHICAGO WHITE SOX LTD.	N
TK0500058	20051012	20070401	TEKWARE	NEW YORK YANKEES	N
TK0500059	20051012	20111124	MISCELLANEOUS DESIGN	ST. LOUIS CARDINALS	N
TK0500060	20051012	20110721	YANKEES	PRL USA HOLDINGS, INC.	N
TK0500061	20051012	20150116	ST. LOUIS CARDINALS	L.C. LICENSING, INC.	N
TK0500062	20051012	20150116	LAUREN STYLE	SECRET'S INC.	N
TK0500063	20051012	20120423	RALPH	REBOOK INTERNATIONAL, INC.	N
TK0500064	20051012	20150726	METRO CONCEPTS	REBOOK INTERNATIONAL LTD.	N
TK0500065	20051012	20150726	LIZ	REBOOK INTERNATIONAL LTD.	N
TK0500066	20051012	20150726	SO BE IT SIGRID OLSEN	REBOOK INTERNATIONAL LTD.	N
TK0500067	20051012	20150726	MARKELLA	REBOOK INTERNATIONAL LTD.	N
TK0500068	20051012	20100422	REBOOK	REBOOK INTERNATIONAL LTD.	N
TK0500069	20051012	20100422	REBOOK	REBOOK INTERNATIONAL LTD.	N
TK0500070	20051012	20080728	REBOOK AND DESIGN	REBOOK INTERNATIONAL LTD.	N
TK0500071	20051012	20120525	DESIGN ONLY (SHOE)	REBOOK INTERNATIONAL LTD.	N
TK0500072	20051012	20051126	THE PUMP	REBOOK INTERNATIONAL LTD.	N
TK0500073	20051012	20071011	ROCKPORT	ROCKPORT COMPANY LLC	N

11/07/2005	U.S. CUSTOMS SERVICE				PAGE	3
07/36:44	IPR RECORDATIONS ADDED IN OCTOBER 2005				DETAIL	
REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES	
TMK0500976	20051013	20120811	ROCKPORT	ROCKPORT COMPANY, LLC	N	
TMK0500975	20051013	20130624	ROCKPORT AND DESIGN	ROCKPORT COMPANY, LLC	N	
TMK0500976	20051013	20100627	DESIGN ONLY (SHARK)	GREAT WHIT SHARK ENTERPRISES INC	N	
TMK0500977	20051013	20061008	GREG NORMAN	GREAT WHITE SHARK ENTERPRISES	N	
SUBTOTAL RECORDATION TYPE						
					82	
TOTAL RECORDATIONS ADDED THIS MONTH						99

DATES AND DRAFT AGENDA OF THE THIRTY-SEVENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirty-seventh session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: January 20, 2006

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-572-8831), or David Beck, Acting Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-seventh, and it will be held from March 20, 2006 to March 31, 2006.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Homeland Security, represented by U.S. Customs and Border Protection,

the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GAIL A. HAMILL,
Chief,

Tariff Classification and Marking Branch.

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE

NC1006E1b

37th Session

O. Eng.

Brussels, 20 January 2006.

DRAFT AGENDA FOR THE 37TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday, 20 March 2006 (11.00 a.m.)

To : Friday, 31 March 2006

N.B. : Thursday, 16 March 2006 (10.00 a.m.) and Friday, 17 March 2006 : Presessional Working Party (to examine the questions under Agenda Item VII)

Monday, 20 March 2006 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the 32nd Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

1. Draft Agenda **NC1006E1b**
2. Draft Timetable **NC1007B1a**

II. REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention and related matters **NC1008E1a**
2. Report on the last meeting of the Policy Commission (54th Session) **NC1009E1a**
3. Approval of decisions taken by the Harmonized System Committee at its 36th Session **NG0105E1a**
NC1005E1a
4. Capacity building activities of the Nomenclature and Classification Sub-Directorate **NC1010E1a**
5. Co-operation with other international organisations **NC1011E1a**
6. New information provided on the WCO Web site **NC1012E1a**

NC1006E1b

- | | | |
|----|---|-----------|
| 7. | Recommendation of 25 June 2005 concerning amendments to the Harmonized System | NC1039E1a |
| 8. | Other | |

III. GENERAL QUESTIONS

- | | | |
|----|---|-----------------------|
| 1. | Study with a view to better understanding why certain Recommendations have not received a greater level of acceptance | NC1013E1a |
| 2. | Insertion of pictures in the Compendium of Classification Opinions | NC0951E1a
(HSC/36) |
| 3. | Use of references to specific administrations in reports | NC0952E1a
(HSC/36) |
| 4. | Correlation between the Harmonized System and the product coverage of selected international Conventions (amendments consequential upon the Article 16 Recommendation of 26 June 2004 and insertion of references to the Rotterdam and Stockholm Conventions) | NC1014E1a |
| 5. | Progress report on the implementation of the HS 2007 edition | NC1015E1a |

IV. RECOMMENDATIONS

Consequential amendments upon the Article 16 Recommendation of 26 June 2004 of the following Recommendations :

- | | | |
|----|--|-----------|
| 1. | Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings to facilitate the collection and comparison of data on the international movement of substances controlled by virtue of amendments to the Montreal Protocol on substances that deplete the ozone layer (28 June 2003) | NC1016E1a |
| 2. | Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the development, production, stockpiling and use of Chemical Weapons and on their destruction (18 June 1996) (amended 25 June 1999) | NC1017E1a |
| 3. | Recommendation of the Customs Co-operation Council on the use of standard units of quantity to facilitate the collection, comparison and analysis of international statistics based on the Harmonized System (30 June 2001) | NC1018E1a |

NC1006E1b

V. REPORT OF THE SCIENTIFIC SUB-COMMITTEE

1. Report of the 21st Session of the Scientific Sub-Committee NS0126E1a
(SSC/21)
2. Matters for decision NC1019E1a

VI. REPORT OF THE REVIEW SUB-COMMITTEE

1. Report of the 32nd Session of the Review Sub-Committee NR0618E1A
B1b
(RSC/32)
2. Matters for decision NC1020E1a

VII. REPORT OF THE PRESESSIONAL WORKING PARTY

1. Possible amendment of the Explanatory Note to heading 02.10 .. NC1021E1a,
Annex A
2. Possible amendment of the Explanatory Notes with respect to
asbestos NC1021E1a,
Annex B
3. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify concentrated elderberry juice in
HS code 3203.00 NC1021E1a,
Annex C
4. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify two graduated urinary drainage
bags and meters in subheading 3926.90 NC1021E1a,
Annex D
5. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify two types of footwear in
subheading 6404.19 NC1021E1a,
Annex E
6. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify a reach stacker in subheading
8426.41 NC1021E1a,
Annex F
7. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify a reach stacker in subheading
8427.20 NC1021E1a,
Annex G
8. Amendments to the Compendium of Classification Opinions to
reflect the decision to classify a product by the name "P-Touch
7000/8000" in subheading 8473.40 NC1021E1a,

3.

NC1006E1b

Annex H

9. Amendments to the Compendium of Classification Opinions to reflect the decision to classify an audio compact disc manufacturing system in subheading 8477.10 NC1021E1a, Annex IJ
10. Amendments to the Compendium of Classification Opinions to reflect the decision to classify set top boxes in subheading 8528.12 NC1021E1a, Annex K

VIII. FURTHER STUDIES

1. Possible amendment of the Explanatory Note to heading 22.08 (HS 2007) NC1022E1a
2. Possible amendment of the Explanatory Note to heading 29.31 . NS0126E1a, Annexes A/5, C/4 (SSC/21) NC1023E1a
3. Possible amendment to the Explanatory Notes to reflect the decision to classify a liquid micronutrient preparation in subheading 3824.90 NC1024E1a
4. Possible amendment of the Explanatory Notes to reflect the classification of a certain type of footwear in subheading 6404.19 NC1025E1a
5. Classification of shelved furniture NC1026E1a
6. Possible amendment of the Explanatory Note to heading 95.04, arising from the classification of the "PS2" NC1027E1a
7. Classification of pegfilgrastim (INN) NS0126E1a, Annex A/4 (SSC/21) NC1044E1a
8. Study on the scope of Note 2 to Chapter 30 and of subheading 3002.10 NC0974E1a (HSC/36) NS0126E1a, Annex A/7 (SSC/21) NC1045E1a
9. Classification of tubes with reagents NS0126E1a, Annex A/8 (SSC/21) NC1046E1a


NC1006E1b

10. Classification of ivermectin (INN) and similar products NS0126E1a,
Annex A/9
(SSC/21)
NC1047E1a

IX. NEW QUESTIONS

1. Amendments to the Compendium of Classification Opinions
consequential upon the Article 16 Recommendation of 26 June
2004 NC1028E1a
2. Classification of ADMUL DATEM 1954 and Multec Data 2520-S
(Request from the South African Administration) NC1029E1a
3. Classification of certain flooring panels NC0976E1a
(HSC/36)
4. Classification of a publication by the name "Wristwatch annual-
2004" (Request from the Thai Administration) NC1030E1a
5. Amendment to heading 50.03 (HS 2007) (English text only) NC1031E1a
6. Classification of mineral wool (Request from the South African
Administration) NC1032E1a
7. Classification of spray guns NC0978E1a
(HSC/36)
8. Classification of Hebo's SSB2 scroll bending machine with SPS2
computer control and pole changing motor NC0998E1a
(HSC/36)
9. Classification of base station (Request from the South African
Administration) NC1033E1a
10. Classification of certain halogen lamps for guns (Request from
the Swiss Administration) NC0979E1a
(HSC/36)
11. Classification of certain power modules, used in electrical
converters NC0985E1a
(HSC/36)
NC1043E1a
12. Possible amendment of the Explanatory Note to heading 85.37
(exclusion paragraph) NC1034E1a
13. Possible amendment of the Explanatory Notes to Chapter 87 NC1035E1a
14. Possible amendments of the Explanatory Notes NC1036E1a
15. Classification of a two-wheeled electrical device for the transport

NC1006E1b

- of a person NC1040E1a
16. Classification of frozen chicken cuts with addition of salt
(Request from the ) NC1041E1a
17. Possible amendment of Subheading Note 1 to Chapter 85 (HS
2007) NC1042E1a

X. ADDITIONAL LIST

- XI. AMENDMENTS TO THE EXPLANATORY NOTES CONSEQUENTIAL
UPON THE ARTICLE 16 RECOMMENDATION OF 26 JUNE 2004
(COMPREHENSIVE TEXT) NC1037E1a

XII. OTHER BUSINESS

1. List of questions which might be examined at a future session NC1038E1a

XIII. ELECTIONSXIV. DATES OF NEXT SESSIONS

NC1006E1b

10. Classification of ivermectin (INN) and similar products NS0126E1a,
Annex A/9
(SSC/21)
NC1047E1a

IX. NEW QUESTIONS

1. Amendments to the Compendium of Classification Opinions consequential upon the Article 16 Recommendation of 26 June 2004 NC1028E1a
2. Classification of ADMUL DATEM 1954 and Multec Data 2520 S (Request from the South African Administration) NC1029E1a
3. Classification of certain flooring panels NC0976E1a
(HSC/36)
4. Classification of a publication by the name "Wristwatch annual - 2004" (Request from the Thai Administration) NC1030E1a
5. Amendment to heading 50.03 (HS 2007) (English text only) NC1031E1a
6. Classification of mineral wool (Request from the South African Administration) NC1032E1a
7. Classification of spray guns NC0978E1a
(HSC/36)
8. Classification of Hebo's SSB2 scroll bending machine with SPS2 computer control and pole changing motor NC0998E1a
(HSC/36)
9. Classification of base station (Request from the South African Administration) NC1033E1a
10. Classification of certain halogen lamps for guns (Request from the Swiss Administration) NC0979E1a
(HSC/36)
11. Classification of certain power modules, used in electrical converters NC0985E1a
(HSC/36)
NC1043E1a
12. Possible amendment of the Explanatory Note to heading 85.37 (exclusion paragraph) NC1034E1a
13. Possible amendment of the Explanatory Notes to Chapter 87 NC1035E1a
14. Possible amendments of the Explanatory Notes NC1036E1a
15. Classification of a two-wheeled electrical device for the transport

NC1006E1b

of a person	NC1040E1a
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16. Classification of frozen chicken cuts with addition of salt (Request from the EC)	NC1041E1a
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17. Possible amendment of Subheading Note 1 to Chapter 85 (HS 2007)	NC1042E1a
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X. ADDITIONAL LIST

XI. <u>AMENDMENTS TO THE EXPLANATORY NOTES CONSEQUENTIAL UPON THE ARTICLE 16 RECOMMENDATION OF 26 JUNE 2004 (COMPREHENSIVE TEXT)</u>	NC1037E1a
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XII. OTHER BUSINESS

1. List of questions which might be examined at a future session	NC1038E1a
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XIII. ELECTIONSXIV. DATES OF NEXT SESSIONS

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE):
NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF
AUTOMATED TRUCK MANIFEST FOR TRUCK CARRIER
ACCOUNTS; DEPLOYMENT SCHEDULE**

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General Notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next two groups, or clusters, of ports to be deployed for this test.

EFFECTIVE DATES: The ports identified in this notice, in the state of Texas, are expected to deploy in two clusters no earlier than January 2006, as provided in this notice. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at James.Swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test would occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur and further stated that additional participants and ports would be selected throughout the duration of the test. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the **Federal Register** on May 31, 2005 (70 FR 30964) announcing the changes.

As noted in the May 31, 2005, General Notice, the next deployment sites will be brought up as clusters. In some instances, one site in the cluster will be identified as the "model site" or "model port" for the cluster. This deployment strategy will allow for more efficient equipment set-up, site checkouts, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, notice included the original port of implementation: Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports); Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

In a notice published in the **Federal Register** (70 FR 43892) on July 29, 2005, CBP announced that the test was being further deployed, in two clusters, at ports in the States of Arizona and North Dakota. CBP stated that the test would be deployed at the following ports in Arizona as of July 25, 2005: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ was designated as the model port. The test was also to be deployed, according to information provided in the notice, at the following ports in North Dakota as of August 15, 2005: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, was designated as the model port.

In a General Notice published in the **Federal Register** (70 FR 60096) on October 14, 2005, CBP announced that the test was to be further deployed in a cluster of ports, in the State of Michigan, no earlier than the dates indicated as follows (all in the year 2005): Windsor Tunnel, October 4; Barge Transport, October 5; Ambassador Bridge, October 7; Port Huron, October 14; Marine City, October 18; Algonac, October 18; and Sault St. Marie, October 28. No port in this cluster was designated as a "model port."

NEW CLUSTERS

Through this notice, CBP announces the next two clusters of ports to be brought up for purposes of implementation of the test. The test will be deployed at the following cluster of ports no earlier than January 2006: Eagle Pass, Texas and Del Rio, Texas. The test will also be deployed no earlier than January 2006 at the following clus-

ter of ports: Brownsville, Texas; Pharr, Texas; Progreso, Texas; Rio Grande City, Texas; and Roma, Texas. No ports in these clusters are designated as "model ports."


Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

DATED: January 12, 2006

WILLIAM S. HEFFELFINGER III,
*Acting Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, January 24, 2006 (71 FR 3875)]



DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, January 25, 2006

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
SAPPHIRE WAFERS**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of sapphire wafers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of sapphire wafers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on December 7, 2005, in Volume 39, Number 50, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 9, 2006.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of sapphire wafers was published in the December 7, 2005, CUSTOMS BULLETIN, Volume 39, Number 50. No comments were received.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY R02101, CBP ruled that sapphire wafers were classified in subheading 7104.90.5000, HTSUSA, which provides for "Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; Ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the sapphire wafers should be classified in subheading 7116.20.5000,

HTSUS, which provides for "Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R02101 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of sapphire wafers according to the analysis contained in Headquarters Ruling Letter (HQ) 967923, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: January 13, 2006

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967923
January 13, 2006
CLA-2 RR:CTF:TCM 967923 KSH
TARIFF NO.: 7116.20.5000

JOEL SIMON, ESQ.
SERKO & SIMON LLP
1700 Broadway, 31st Floor
New York, NY 10019

RE: Revocation of New York Ruling Letter (NY) R02101, dated June 20, 2005; Classification of sapphire wafers.

DEAR MR. SIMON:

This is in response to your letter of September 7, 2005, on behalf of your client Alconix USA, Inc., in which you request reconsideration of New York Ruling Letter (NY) R02101, issued on June 20, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of sapphire wafers. The sapphire wafers were classified in subheading 7104.90.5000, HTSUS, which provides for "Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; Ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport: Other: Other." You assert that because the synthetic sapphire wafers have been advanced beyond the condition of synthetic sapphires to become unique articles of commerce, they are classified in subheading 7116.20.5000,

HTSUS, which provides for "Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other." In accordance with your request for reconsideration of NY R02101, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of NY R02101 was published on December 7, 2005, in Vol. 39, Number 50, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

The sapphire wafer is a substrate for light-emitting diodes (LED). To obtain the sapphire wafer a synthetic sapphire must be grown. To do this, a crucible, which serves as the growth chamber, is filled with aluminum and an inert gas. The aluminum is then melted. A small crystal of sapphire, known as a "seed crystal", is mounted on a rod and dipped into the crucible until the seed crystal just touches the melted alumina. The rod is then pulled slowly out of the crucible at a slow, specified rate of speed. As the rod is pulled from the crucible the crystal grows as the seed pulls materials from the melt. The materials begin to cool and solidify forming a rod shape. The resulting rod of synthetic sapphire crystal is known as a boule. The raw boule is cut into a rod of specific dimensions, approximately 76.2mm in diameter and 80-100mm long using a diamond impregnated circular die. The angle of the cut can be altered to fit the client's preferences. To obtain the sapphire wafer, a diamond saw slices off 130-150 wafers from the rod, each of which is approximately 550 microns in thickness.

ISSUE:

Whether the sapphire wafers are classified as synthetic stones of heading 7104, HTSUS, or as articles of precious or semi-precious stone of heading 7116, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Chapter 71, HTSUS, provides in pertinent part for precious or semiprecious stones. Note 1, to Chapter 71, HTSUS, states:

[s]ubject to note 1(a) of section VI and except as provided below, all articles consisting wholly or partly:

(a) [o]f natural or cultured pearls or of precious or semiprecious stones (natural, synthetic or reconstructed)...are to be classified in this chapter.

The sapphire crystal is altered from its original formation as a boule. The sapphire crystal is cut subsequent to formation as a boule when it becomes a wafer used to make a LED.

In NY F85369, dated April 28, 2000 and NY F88737, dated February 12, 2001, CBP classified sapphire substrates for LEDs in subheading 7116.20.5000, HTSUS. Similarly, in NY G89563, dated May 10, 2001, CBP classified discharge tubes and aperture plates fabricated from synthetic sapphire in subheading 7116.20.5000, HTSUS, and in NY 802695, dated October 20, 1994, synthetic sapphire blanks were classified in 7116.20.2000, HTSUS. In contrast, in Headquarters Ruling Letter (HQ) 954877, dated December 21, 1993, sapphire crackle created from sapphire boules which were subsequently cracked were classified in subheading 7104.20.0000, HTSUS.

The instant sapphire wafers, like the sapphire substrates, discharge tubes, aperture plates and sapphire blanks of NY F85369, F88737, G89563 and 802695, have been advanced beyond the condition of synthetic sapphires into articles of sapphires. Accordingly, the sapphire wafers are classified in subheading 7116.20.5000, HTSUS.

HOLDING:

The sapphire wafers are classified in subheading 7116.20.5000, HTSUS, which provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other." The general column one rate of duty is Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY R02101, dated June 20, 2005, is hereby revoked.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ANODES AND CATHODES USED IN ELECTROLYSIS

AGENCY: U. S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of anodes and cathodes used in electrolysis.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke a ruling relating to the classification of anodes and cathodes used in electrolysis under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles are titanium anodes coated with ruthenium and nickel cathodes coated with platinum. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before March 10, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (202) 572-8779.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as

amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling relating to the tariff classification of ruthenium-coated titanium anodes and platinum-coated nickel cathodes. Although in this notice CBP is specifically referring to one ruling, NY R02374, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one listed. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY R02374, dated August 29, 2005, ruthenium-coated titanium anodes and platinum-coated nickel cathodes were held to be classifiable as other articles of precious metal or of metal clad with precious metal, in subheading 7115.90.60000, HTSUSA. This ruling was based on the belief that the anodes and cathodes were of a type used in electroplating processes as a source of the precious metal. NY R02374 is set forth as "Attachment A" to this document.

It is now CBP's position that these anodes and cathodes are classifiable in subheading 8543.90.8880, HTSUSA, as other parts of electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY R02374 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967941, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before tak-

ing this action, we will give consideration to any written comments timely received.

DATED: January 20, 2006

Gail A. Hamill for MYLES B. HARMON,
*Director,
Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY R02374
August 29, 2005
CLA-2-71:RR:NC:N1:113 R02374
CATEGORY: Classification
TARIFF NO.: 7115.90.6000

MR. WILLIAM PAULIN
KUEHNE CHEMICAL COMPANY, INC.
86 North Hackensack Avenue
South Kearny, NJ 07032

RE: The tariff classification of electroplating anodes from the United Kingdom

DEAR MR. PAULIN:

In your letter dated August 4, 2005, you requested a tariff classification ruling.

The merchandise is material for use in an electrolysis plant. It consists of ruthenium-coated titanium anodes and platinum-coated nickel anodes. Your letter also mentions, but does not describe nor request the classification of, gasket materials.

The Harmonized Tariff Schedule of the United States, Section XIV, Chapter 71, Note 4, defines platinum and ruthenium (a form of platinum) to be precious metals. The imported merchandise is used in the electrodeposition of the precious metal component onto other metal objects. The base metals, titanium and nickel, are used as carrier media for the precious metals. After the precious metal has diminished, the spent anodes and cathodes will be returned to the UK to be refurbished. For this reason, the essential character of the articles is the precious metals. In your letter, you suggest that the articles be classified as unwrought or semi-manufactured articles of platinum in heading 7110, HTS. However, the metals have been made into articles that do not conform to the definition of unwrought or semi-manufactured.

The applicable subheading for the anodes and cathodes will be 7115.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of precious metal or of metal clad with precious metal, other, other. The rate of duty will be 4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967941

CLA-2 RR:CTF:TCM 967941 JAS

CATEGORY: Classification

TARIFF NO.: 8543.90.8880

MR. WILLIAM PAULIN
KUEHNE CHEMICAL COMPANY, INC.
86 North Hackensack Avenue
South Kearny, NJ 07032

RE: Anodes and Cathodes Used In Machines for Electrolysis; NY R02374
Revoked

DEAR MR. PAULIN:

In a letter to the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, dated September 15, 2005, you request reconsideration of NY R02374, which the NCSD issued to you on August 29, 2005. At issue is the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain anodes and cathodes used in electrolysis. Your letter has been referred to this office for reply.

FACTS:

In NY R02374, ruthenium-coated titanium anodes and platinum-coated nickel cathodes for use in an electrolysis plant were held to be classifiable as other articles of precious metal or of metal clad with precious metal, in subheading 7115.90.6000, HTSUSA. The ruling described articles that were to be used in the electrodeposition of the precious metal component onto other metal objects with the base metals, titanium and nickel, being used as carrier media for the precious metal. After the precious metal is diminished, the anodes and cathodes are returned to the United Kingdom to be refurbished.

You have explained that the anodes and cathodes are in fact used in an electrolysis plant to electrolyze brine into chlorine and sodium hydroxide. The precious metal coatings, platinum and ruthenium, act as a catalyst to allow the proper chemical reactions to occur. The precious metals are not re-deposited onto other metal objects.

The HTSUS provisions under consideration are as follows:

7115	Other articles of precious metal or of metal clad with precious metal:		
7115.90	Other:		
	Other:		
7115.90.60	Other		
*	*	*	*
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]; parts thereof:		
8543.30.00	Machines and apparatus for electroplating, electrolysis or electrophoresis		
8543.90	Parts:		
	Other:		
	Other:		
8543.90.88	Other		

ISSUE:

Whether the anodes and cathodes, as described, are provided for in heading 8543.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Initially, Chapter 71, Note 3(k), HTSUS, states that machinery, mechanical appliances or electrical goods, or parts thereof, of section XVI, are not covered by chapter 71. Therefore, the issue is whether the anodes and cathodes, as described, are parts for tariff purposes and, if so, whether they are parts of electrical goods of chapter 84 or chapter 85.

As to the parts issue, articles that are integral, constituent components of another article, are necessary to the completion of that article, and which satisfy a specific and integral need in the operation of that article qualify as parts for tariff purposes. See *Mitsubishi Int'l v. United States*, 17 CIT 871, 829 F. Supp. 1387 (1993), and cases cited. The ruthenium-coated titanium anodes and platinum-coated nickel cathodes allow the proper chemical reactions to occur in the electrolytic process by which chlorine and sodium hydroxide are produced. These articles satisfy the above criteria for parts of machines and apparatus for electrolysis.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. See *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd*, 68 F. 3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85

are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b). Machines and apparatus for electrolysis are specifically provided for in subheading 8543.30.00, HTSUS. By function and design, the described anodes and cathodes appear to be principally, if not solely, used with such machines and apparatus.

HOLDING:

Under the authority of GRI 1 and Section XVI, Note 2(b), the ruthenium-coated titanium anodes and platinum-coated nickel cathodes are provided for in heading 8543. They are classifiable in subheading 8543.90.88.80, HTSUSA.

EFFECT ON OTHER RULINGS:

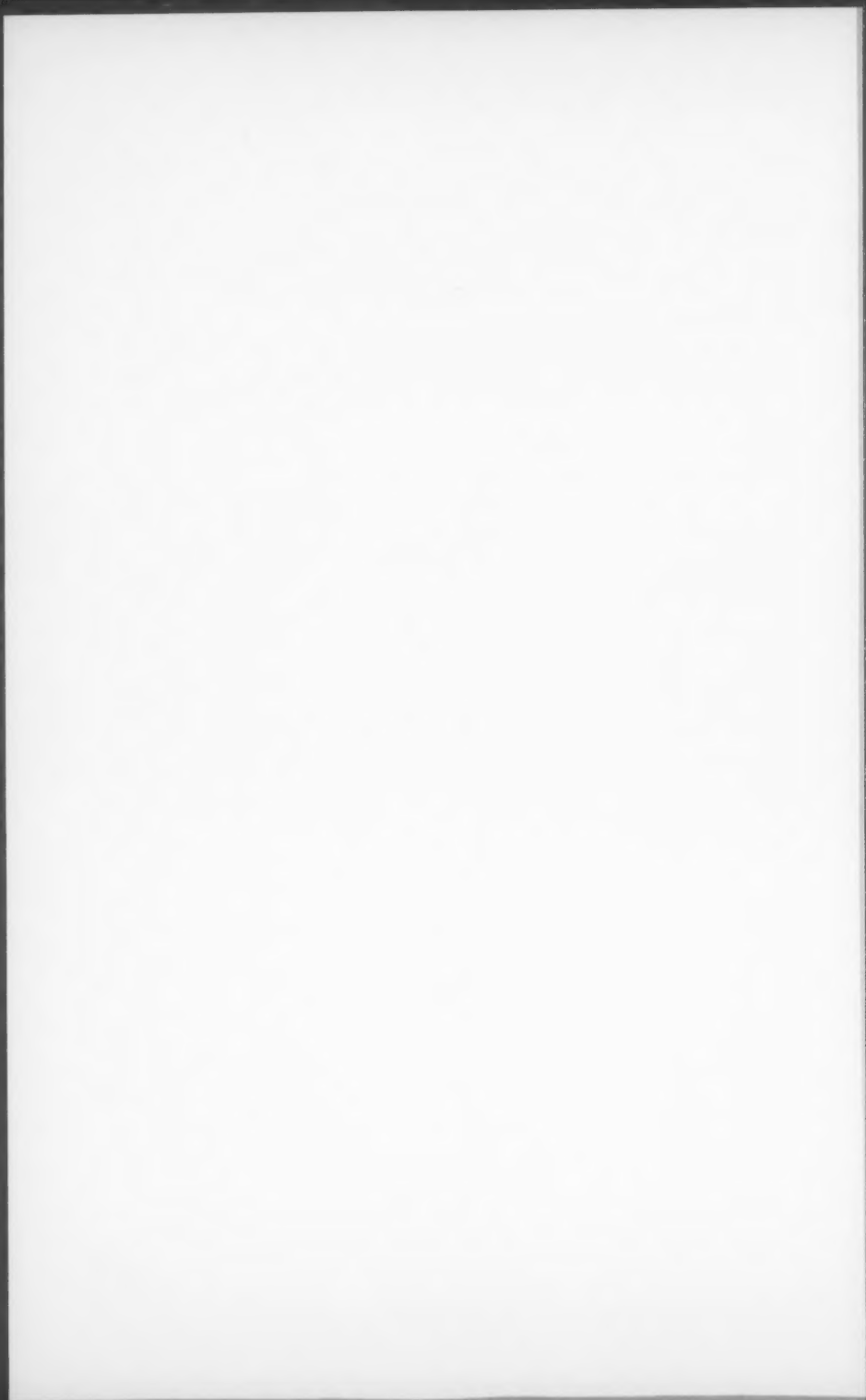
NY R02374, dated August 29, 2005, is revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.





United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Jane A. Restani

Judges

Gregory W. Carman
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay

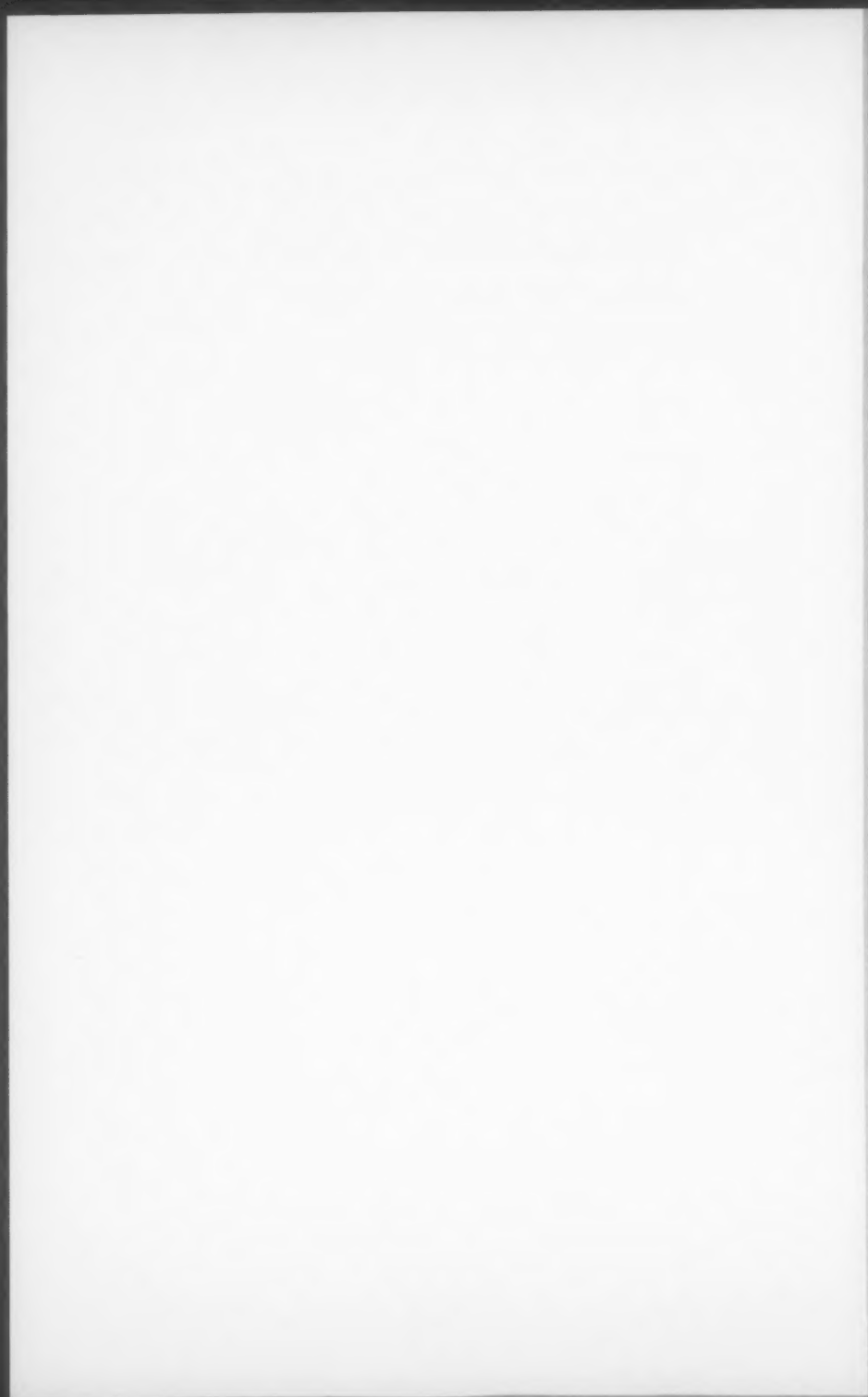
Delissa A. Ridgway
Richard K. Eaton
Timothy C. Stanceu

Senior Judges

Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

Slip Op. 06-10

VERTEX INTERNATIONAL, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Restani, Chief Judge
Court No. 05-00272

[Scope determination on Vertex International, Inc.'s garden carts from the People's Republic of China REMANDED for exclusion of the garden carts.]

Dated: January 19, 2006

Neville Peterson LLP (Curtis W. Knauss, John M. Peterson, and George W. Thompson) for plaintiff.

Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, Patricia M. McCarthy, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (Stephen C. Tosini), Carrie Owens, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

OPINION

Restani, Chief Judge: Plaintiff Vertex International, Inc. ("Vertex") moves for judgment on the agency record pursuant to USCIT R. 56.2, claiming that the U.S. Department of Commerce ("Commerce") improperly ruled that its "garden carts" were within the scope of an antidumping duty order on hand trucks from the People's Republic of China. See Final Scope Ruling on the Antidumping Duty Order on Hand Trucks from the People's Republic of China, U.S. Dep't of Commerce Internal Memorandum from Wendy J. Frankel to Barbara E. Tillman (Feb. 15, 2005), P.R. Doc. 3, Def's App. Tab 3 [hereinafter Final Scope Ruling].

On December 27, 2004, Vertex requested a ruling from Commerce to determine whether its garden carts fell within the scope of Commerce's antidumping duty order on hand trucks from the People's

Republic from China.¹ See Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 Fed. Reg. 70,122 (Dep't of Commerce Dec. 2, 2004) (notice of antidumping duty order) [hereinafter Antidumping Duty Order or "Order"]. In an unpublished ruling, Commerce found that the garden carts exhibited all of the essential physical characteristics of hand trucks as outlined by the Antidumping Duty Order and were within the scope of the Order. See Final Scope Ruling, Def.'s App. Tab 3, at 7. Vertex contends that Commerce's Final Scope Ruling is not supported by substantial evidence on the record and is otherwise not in accordance with law. This court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2000).

I. BACKGROUND

A. The Hand Truck Order

On December 2, 2004, Commerce published an antidumping duty order concerning hand trucks from the People's Republic of China. Antidumping Duty Order, 69 Fed. Reg. at 70,122. The Order covers hand trucks "manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof." Id. It states that the covered product is commonly referred to as a "hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley," and typically imported under three subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 8716.80.50.10; 8716.80.50.90; and 8716.90.50.60.² Id.

The Order gives the following description of a hand truck:

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of

¹Vertex is an importer based in Watertown, Minnesota, and sells garden and yard products.

²The relevant parts of HTSUS subheading 8716 provides:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
...	
8716.80.50.10	Industrial hand trucks
8716.80.50.90	Other
8716.90	Parts:
...	
8716.90.50.60	Other

the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Id.

The language as to the scope of the investigation remained the same from the notice of the initiation of investigation through the preliminary and final determination of sales at less than fair value, and the Antidumping Duty Order. See *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 68 Fed. Reg. 68,591 (Dep't of Commerce Dec. 9, 2003) (initiation of antidumping duty investigation); *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 Fed. Reg. 29,509 (Dep't of Commerce May 24, 2004) (preliminary determ. and postponement of final determ.); *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 Fed. Reg. 60,980 (Dep't of Commerce Oct. 14, 2004) (final determ.); *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 Fed. Reg. 65,410 (Dep't of Commerce Nov. 12, 2004) (amended final determ.); *Antidumping Duty Order*, 69 Fed. Reg. at 70,122.

C. Vertex's Arguments

Vertex argues that Commerce's ruling that its garden carts are within the scope of the Order because they exhibited all the physical characteristics of hand trucks is unsupported by substantial evidence. Vertex argues that Commerce should not have ended its scope inquiry at an examination under 19 C.F.R. § 351.225(k)(1) (2005)

but should have conducted an inquiry under the test set forth in *Diversified Products Corp. v. United States*, 6 CIT 155, 162, 572 F. Supp. 883, 889 (1983) (codified in 19 C.F.R. § 351.225(k)(2) (2005)).³ See Letter from Vertex Int'l, Inc. to Dep't of Commerce, Int'l Trade Admin. (Dec. 27, 2004), P.R. Doc. 1, Def.'s App. Tab 1, at 6 [hereinafter Request for Scope Ruling].

In arguing that an inquiry under § 351.225(k)(1) is not dispositive in this case, Vertex first claims that the language of the Order is ambiguous and does not specifically include or exclude its garden carts. Vertex argues that while the Order covers hand trucks known by other names – “convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley” – it does not cover products like carts, garden carts, or caddies. (Pl.'s Br. 9–10.)

Additionally, Vertex distinguishes the use of its garden carts from the use of hand trucks. Vertex claims that unlike hand trucks, its garden carts are not used primarily to transport objects but are used primarily for organizing, storing, and holding equipment and supplies. The garden carts' hollow, plastic wheels are also designed for use on grass and soil surfaces, rather than on sidewalks, curbs and other rough surfaces. Vertex claims that the tires on its garden carts would deform or break if the garden carts are used to carry heavy loads or used to move loads over rough or uneven terrains. (Pl.'s Br. 10.)

Vertex also argues that its garden carts do not have all of the same characteristics as hand trucks. While a garden cart has a vertical frame, handle, and two wheels, Vertex contends that the subject cart's “stabilizing plate” is not a projecting edge or toe plate as defined by the Order. (Pl.'s Br. 15–16.) The Order provides that a hand truck has “a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.” Anti-dumping Duty Order, 69 Fed. Reg. at 70,122. While the garden cart's “stabilizing plate” is made from steel wire welded into a grid pattern that projects out horizontally from the bottom of the vertical frame, Vertex argues that this stabilizing plate does not “readily ‘slide under’ a load” as the Order requires. Request for Scope Ruling, Def.'s App. Tab 1, at 6. Additionally, the stabilizing plate does not have a large carrying capacity, and the garden cart itself has no “centrally positioned frame member against which a stabiliz[ing] plate load can be balanced.” *Id.*, Def.'s App. Tab 1, at 5.

³ 19 C.F.R. § 351.225(k) outlines the procedures that Commerce should follow when interpreting the scope of an antidumping duty order. *Id.* First, Commerce considers the three factors articulated in 19 C.F.R. § 351.225(k)(1). *Id.* If such an inquiry is not dispositive, Commerce considers the additional five factors articulated in 19 C.F.R. § 351.225(k)(2). *Id.*

After arguing that an inquiry under § 351.225(k)(1) is not dispositive, Vertex argues that under a § 351.225(k)(2) inquiry, its garden carts are outside the scope of the Order.⁴

D. Industry Response

On January 19, 2005, the petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc., stated their view that Vertex's garden carts were excluded from the scope of the Order. See Letter from Gleason Indus. Prods., Inc. & Precision Prods., Inc. to Donald L. Evens, Sec'y of Commerce, U.S. Dep't of Commerce (Jan. 18, 2005), P.R. Doc. 2, Def.'s App. Tab 2, at 2. Although the petitioners did not accept Vertex's argument that its garden carts should be excluded based on their intended use in gardening because the Order specifically stated that hand trucks could be "suitable for any use," the petitioners did agree that Vertex's garden carts do not have all of the characteristics of hand trucks as outlined in the Order. The petitioners reasoned that because the projecting plate of the subject garden cart does not "readily 'slide under' a load," Vertex's product is excluded from the scope of the Order. *Id.* In other words, the petitioner advised Commerce that Vertex's carts are not within the scope of the Order because they are unambiguously excluded by the Order. The court agrees.

II. JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 28 U.S.C. § 1581(c). The court will affirm Commerce's scope determination if it is supported by substantial evidence and in accordance with the law. See 19 U.S.C. §§ 1516a(b)(1)(B)(i), 1516a(a)(2)(B)(ii), 1516a(a)(2)(B)(vi) (2000).

III. DISCUSSION

A. Relevant law

In examining whether a particular product is within the scope of an antidumping duty order, Commerce follows the two-step process set forth in 19 C.F.R. § 351.225(k). Under § 351.225(k)(1), Commerce examines "[t]he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary [of Commerce] (including prior scope determinations) and the [International Trade] Commission." 19 C.F.R. § 351.225(k)(1). If an examination of the three sources in § 351.225(k)(1) is not dispositive of the scope, Commerce then considers the five factors found in 19 C.F.R. § 351.225(k)(2): "(i) [t]he physical characteristics of the product; (ii) [t]he expectations of the ultimate purchasers; (iii) [t]he

⁴ As this opinion must focus upon Commerce's "interpretation" of the Order, it is unnecessary to examine Vertex's arguments under § 351.225(k)(2) at this juncture.

ultimate use of the product; (iv) [t]he channels of trade in which the product is sold; and (v) [t]he manner in which the product is advertised and displayed." *Id.*

Although § 351.225(k) offers the interpretive rules for scope determinations when the description of a product is written in general terms, there are "circumstances in which an order's relevant terms are unambiguous." *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172, 1184 (CIT 2004). In such cases, Commerce may rule based upon the language of the Order itself because "[t]he language of an order is the 'cornerstone' of a court's analysis of an order's scope." *Id.* (quoting *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097-98 (Fed. Cir. 2002)). Furthermore, Commerce cannot "make a scope determination that conflicts with an order's terms, nor can it interpret an order in a way that changes the order's scope." *Id.* (citing *Duferco*, 296 F.3d at 1087, 1094-95).

B. Commerce's final scope ruling is erroneous

As indicated, in its unpublished final scope ruling, Commerce found that Vertex's garden carts were within the scope of the Anti-dumping Duty Order. Commerce found that the garden carts were not automatically excluded from the Order even though they were equipped with additional parts not mentioned in the Order and even though they were primarily used for the storage and organization of tools.⁵

⁵As a preliminary matter, Commerce properly found that the presence of additional features on the garden cart, an upper rack and lower rack, does not exclude it from the scope of the Order. The additional features of the garden cart do not automatically exclude it from the Order because the Order specifically provides that "the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame." *Antidumping Duty Order*, 69 Fed. Reg. at 70,122 (emphasis added).

Commerce also correctly rejected Vertex's argument that the primary use of its garden cart automatically excluded it from the scope of the Order. Commerce noted that the scope of the Order specifically covers hand trucks "suitable for any use." *Id.* Accordingly, the fact that the subject cart can be used for gardening and the storage and organization of gardening tools does not automatically exclude it from the scope of the Order.

Additionally, Vertex fails to argue convincingly that the Order does not cover its garden cart simply because the Order does not refer explicitly to it by its name. First, the scope language is unambiguous in treating the listed names of the articles as examples, not as an exhaustive list. See *Antidumping Duty Order*, 69 Fed. Reg. at 70,122 ("Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley."). Second, the court of appeals has recognized that it is unnecessary to "circumscribe the entire universe of articles" that might possibly fall within the order." *Novosteel SA v. United States*, 284 F.3d 1261, 1269 (Fed. Cir. 2002) (citing *Nitta Indus. Corp. v. United States*, 997 F.2d 1459, 1464 (Fed. Cir. 1993)). Rather than state each and every product that is covered by an order, Commerce gives a "description[] of [the] subject merchandise [that is] written in general terms." 19 C.F.R. § 351.225(a); *Novosteel*, 284 F.3d at 1269-70. Thus, even though the Order did not specifically refer to a garden cart, the absence of a direct reference does not automatically exclude it from the Order. See *id.*

In making its scope determination, Commerce claimed to have "evaluated Vertex's request in accordance with 19 CFR 351.225(k)(1) and [found] that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary . . . and the ITC are . . . dispositive with respect to Vertex's Cart." Final Scope Ruling, Def.'s App. Tab 3, at 5.⁶ The government now argues that the terms of the Order were unambiguous and that further review was unnecessary. A review of Commerce's analysis in its scope ruling shows that although it did review the petition and a prior scope determination as mentioned in the regulation, Commerce based its ruling upon the language of the Order itself. While Commerce may base its ruling on the unambiguous language of an order, see *Duferco Steel*, 296 F.3d at 1096, here, that unambiguous language excludes rather than includes the garden carts.

In the present case, the Antidumping Duty Order specifically lays out the characteristics of a hand truck as:

consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame.

Antidumping Duty Order, 69 Fed. Reg. 70,122. In its Final Scope Ruling, Commerce properly identified the four key characteristics of a hand truck – a vertical frame, a handle, at least two wheels, and a projecting edge or toe plate – and it is uncontested that the subject garden cart possesses the first three characteristics of a hand truck. Commerce failed, however, to cite record evidence demonstrating that the garden cart possessed a toe plate as defined by the Order and ignored contrary evidence.

The Order defines "projecting edge or toe plate" according to its function. Specifically, it states that "[t]he projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load."⁷ Id. Although Commerce specified that a hand truck may be "suitable for any use," the "any use" language is limited by this sentence which requires that a hand truck's toe plate slide under a load to lift or move it. Commerce must give effect to this sentence, which states an essential physical characteristic of the articles included within the scope and specifies the purpose for which the horizontal projecting edge or toe plate must be designed.

⁶Commerce then found that "it [is] unnecessary to consider the additional factors in 19 CFR 351.225(k)(2)." *Final Scope Ruling*, Def.'s App. Tab 3, at 5.

⁷Commerce included this sentence without variation from the initiation of the investigation through the preliminary and final determination of sales at less than fair value and the final Order.

Having specifically defined "toe plate," Commerce did not properly analyze whether the garden cart's stabilizing plate is a toe plate that slides under a load to lift or move it. The Final Scope Ruling's only consideration of whether the garden cart's "toe plate" falls within the terms of the Order consists of the following statement:

Although Vertex asserts that the Cart's toe plate is "too thick to slide under a load conveniently," and the Petitioners assert that the toe plate's inability to "slide" under a load implies that the Cart does not fit in the definition of the scope of the Order, neither party provided any record evidence to determine whether the toe plate can or cannot actually "slide" under a load. Therefore, we have determined that the Cart falls within the definition of the scope of the Order because all four scope characteristics are present.

Final Scope Ruling, Def's App. Tab 3, at 7 (footnotes omitted). Despite having given information as to the operation instructions of the garden cart and its dimensions and composition, Commerce incorrectly claimed that neither party provided any evidence as to whether the garden cart slides under a load to lift or move it, and proceeded to find that all of the characteristics of a hand truck were present.⁸ *Id.*

Contrary to Commerce's assertions here, Vertex did offer evidence regarding whether its garden cart slides under a load to lift or move it, and that evidence indicates that Vertex's garden cart cannot do so. First, evidence shows that the garden cart was not designed to, and cannot, slide under a load. In order to slide under a load, a hand truck must be pushed towards a load before the toe plate can slide underneath it. Here, the operation instructions from Vertex warn: "DO NOT PUSH. This product is designed to be PULLED ONLY. Pushing may damage the product **and even cause bodily injury.**" Request for Scope Ruling, Def's App. Tab 1, at 2 (emphasis original). This warning indicates that the manufacturer of the subject cart intended for objects to be placed on the stabilizing plate by hand and did not design the plate to slide under a load. Additionally, unlike the projecting edge of a hand truck, which is beveled to facilitate its sliding under a load, the edge of the stabilizing plate is a round steel wire that is not conducive to sliding under a load.⁹ Thus, the evidence on the record demonstrates that the garden cart was not designed to, and cannot, slide under a load.

⁸In the normal course Commerce has the authority to request further information if the uncontradicted evidence of record does not satisfy its concerns. The court also notes that Commerce did not find Vertex's evidence uncredited. It simply ignored it.

⁹The garden cart also has a metal, wire frame that projects out from the top rack of the subject cart and is parallel to the stabilizing plate. This wire frame prevents the cart from sliding under, and carrying, a taller load which would bump against the wire frame.

Second, the garden cart does not lift or move a load like a hand truck.¹⁰ Unlike the garden cart, a hand truck is designed to carry heavy loads. Although the Order does not specify a specific load capacity for hand trucks, the fact that hand trucks need to slide under a load before it can be lifted or moved indicates that hand trucks are designed to carry heavy loads.¹¹ Here, unlike a hand truck which typically has a solid metal toe plate that can carry heavy loads, the garden cart has a metal wire stabilizing plate that cannot carry heavy loads. In fact, Vertex specifically stated that its garden cart cannot carry a load over 150 pounds. Request for Scope Ruling, Def.'s App. Tab 1, at 2. Moreover, the fact that the garden's cart's wheels may shatter if a heavy load was placed on the cart further suggests that the cart was not designed like a hand truck to carry heavy loads. Request for Scope Ruling, Def.'s App. Tab 1, at 6. Additional evidence indicates that Vertex's garden cart may not be able to lift or move any load at all. The garden cart does not have a central frame member against which a load can be balanced when it is lifted or moved. Request for Scope Ruling, Def.'s App. Tab 1, at 5-6. Even though a central frame member is not a specific requirement of the Order, the absence of an object against which a load can be balanced prevents the secure lifting or moving of a load. Thus, contrary to Commerce's assertions, the record does contain evidence regarding the garden cart's ability to slide under a load to lift or carry it, and the only relevant evidence in the record indicates that the garden cart does not meet this essential requirement of the Order.

While Commerce may define and clarify the scope of an antidumping duty order, it cannot "interpret an antidumping order so as to change the scope of that order, nor can Commerce interpret an order in a manner contrary to its terms." *Duferco*, 296 F.3d at 1095 (quoting *Eckstrom Indus., Inv. v. United States*, 254 F.3d 1068, 1072 (Fed.Cir. 2001)) (internal quotation marks omitted). Commerce "interprets" an order contrary to its terms if it finds a product within the scope of the order despite the fact that the product does not exhibit all of the requirements of the order. By finding that Vertex's garden cart is within the scope of the Order without evidence that the garden cart's stabilizing plate can slide under a load to lift or move it, Commerce has impermissibly broadened the scope of the Order to include products that have projecting edges or toe plates that do not slide under a load for carrying purposes.

¹⁰ In its brief, while the government argues that the garden cart's stabilizing plate can slide under a load, it does not address whether the subject cart can lift or move a load. The "lifting and/or moving" requirement is essential to the Order because it explains why a projecting edge has to slide under a load and it further explains how a hand truck operates.

¹¹ Commerce's Final Scope Ruling refers to the petition which describes a hand truck's load capacity as "generally not exceeding 1000 pounds." *Id.*, Def.'s App. Tab 3, at 7. Although this description was not found in the Order, it is indicative of the weight that hand trucks are meant to carry.

III. CONCLUSION

For the foregoing reasons, Commerce erred when it did not follow the unambiguous language of the Antidumping Duty Order which required that a product slide under a load to lift or move it. Upon remand Commerce shall issue a determination excluding Vertex's garden carts from the Order.

Slip Op. 06-12

LADY KELLY, INC., Plaintiff, v. UNITED STATES SECRETARY OF AGRICULTURE, Defendant.

Before: Richard W. Goldberg, Senior Judge
Court No. 05-00480

MEMORANDUM OPINION AND ORDER

[Defendant's motion to strike is granted. Plaintiff has ten days to file a response to Defendant's motion to dismiss that complies with USCIT R. 75(b).]

Dated: January 24, 2006

GOLDBERG, Senior Judge: Defendant United States Department of Agriculture moves to strike Plaintiff Lady Kelly, Inc.'s response to Defendant's motion to dismiss. Defendant submits that the Court should strike Plaintiff's response because Plaintiff's response was filed by someone other than the attorney of record for the Plaintiff.

Plaintiff is a corporation engaged in the shrimping business in Georgia. The Foreign Agriculture Service recertified a petition for trade adjustment assistance ("TAA") filed by the Georgia Shrimp Association on behalf of Georgia shrimpers. *See Trade Adjustment Assistance for Farmers*, 69 Fed. Reg. 68,303 (Nov. 24, 2004). The effective date of the certification was November 29, 2004. Eligibility for the adjustment assistance disbursed pursuant to 19 U.S.C. § 2401e is conditioned on an "adversely affected agricultural commodity producer" (in this case, the shrimpers) filing a TAA application within ninety days of the date of certification. *See* 19 U.S.C. § 2401e (2005).

Plaintiff filed an application that was received on June 9, 2005, more than 180 days after the date of certification. Defendant denied the application for failure to file within the statutorily prescribed ninety-day window, which expired on February 28, 2005. On August 17, 2005, Plaintiff commenced proceedings in this Court under 28 U.S.C. § 1581(d), contending that the application was in fact mailed

on January 8, 2005, in light of which the Court should equitably toll the ninety-day window.

On October 28, 2005, Plaintiff's counsel R. Michael Patrick filed a motion to appear *pro hac vice* in this matter, which the Court granted on December 12, 2005. In the meantime, on November 4, 2005, Defendant filed a motion to dismiss under USCIT R. 12(b)(5) or, in the alternative, for judgment on the agency record under USCIT R. 56.1. On December 9, 2005, Plaintiff filed, directly and not through counsel, a response to Defendant's motion to dismiss. Such response consisted of a one and one-half page recitation of the Plaintiff's version of the facts, as well as allegations that the TAA program "is unfair and inequitable for the small business owner." Plaintiff's Response to Defendant's Motion to Dismiss ¶ 1. It was signed by Stewart E. Sadler, Plaintiff's sole shareholder, after whose signature the words "pro se" appeared. Four days after the response came due and was filed, the Court granted Mr. Patrick's motion to appear *pro hac vice*, **establishing him as the counsel of record in this case.**

On December 21, 2005, Defendant filed a motion to strike Plaintiff's response "because [it] was filed by someone other than the attorney of record . . ." Defendant's Motion to Strike, and in the Alternative, Reply Brief in Support of Defendant's Motion to Dismiss and Motion for Judgment upon the Administrative Record ("Motion to Strike") at 1. In that same motion, Defendant replied, in the alternative, to Plaintiff's response brief of December 9, 2005. Defendant attached a handwritten note from Mr. Patrick to the Clerk of the U.S. Court of International Trade advising the Court that "my client is now representing himself-pro-se [sic]. I believe the U.S. Constitution allows him to do so." Motion to Strike (Ex. A).

Of course, Mr. Patrick was wrong. Not only does the U.S. Constitution provide no such right, *see* U.S. Const. amend. VI (applying only to "criminal prosecutions"), but federal courts have consistently denied corporations even the opportunity to appear *pro se* in court. The rule is well established that a corporation *must always* appear through counsel. *See* USCIT R. 75(b) ("Except for an individual (not a corporation, partnership, organization or other legal entity) appearing *pro se*, each party and any *amicus curiae* must appear through an attorney authorized to practice before the court."); *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."). There exists a "virtually unbroken line of state and federal cases [that] has approved the rule that a corporation can appear in court only by an attorney." *United States v. Neman Bros. & Assoc., Inc.*, 17 CIT 181, 181, 817 F. Supp. 967, 968 (1993) (quoting *In re Holliday's Tax Serv., Inc.*, 417 F. Supp. 182, 183 (E.D.N.Y. 1976),

aff'd sub nom. Holliday's Tax Serv., Inc. v. Hauptman, 614 F.2d 1287 (2d Cir. 1979)).¹

Thus, Plaintiff's response to Defendant's motion to dismiss must be stricken from the record because a corporation may not appear *pro se*, and must appear in court by an attorney. Plaintiff was in the difficult situation of having retained a counsel that was not admitted *pro hac vice* to appear before the Court in time to file Plaintiff's response. The situation was complicated further when Mr. Patrick communicated informally with the Clerk of the Court that his client intended to do something that an informed attorney would realize is an impossible course of action – i.e., a corporation representing itself *pro se*. As of now, Mr. Patrick is still counsel of record for Plaintiff, and will continue as such until Mr. Patrick submits a motion to withdraw as counsel. His handwritten note to the Clerk of the Court is insufficient to constitute withdrawal, since USCIT R. 75(d) requires that withdrawal be accomplished by court order upon motion from the attorney. As such, at this time only Mr. Patrick may appear before this Court in this matter.

In most cases, striking a plaintiff's response brief would render a defendant's underlying motion to dismiss under USCIT R. 12(b)(5) judgment-ready. See USCIT R. 7(d) (providing that a proper response to a dispositive motion, in order to be considered, must be filed within 30 days of the filing of the dispositive motion). Typically, the court would then test the adequacy of the complaint standing alone, without any briefing in support of its claim to rebut the defendant's motion to dismiss. In a case like this, where the lack of timeliness is patent, and dismissal can be avoided only by showing that equitable tolling is appropriate, a plaintiff's failure to present an argument will likely result in dismissal.

Here, however, the Court believes such action unwarranted at this stage. Because the Court is mindful of Plaintiff's difficulties resulting from the Court's delayed response to Mr. Patrick's *pro hac vice* motion, in conjunction with the confusion attending Mr. Patrick's representation of Plaintiff, as well as the lack of legal sophistication of many TAA plaintiffs, the Court prefers to grant Plaintiff an opportunity to respond with a brief that contains arguments the Court may actually entertain. Accordingly, the Court will *sua sponte* grant Plaintiff a ten-day extension of time, from the entering of this order, within which to file, through an attorney, a new response. *Accord*

¹ *In re Holliday's* permitted a close corporation's sole shareholder to represent himself in a bankruptcy proceeding, noting that "[t]he traditional rule is unnecessarily harsh and unrealistic when applied in bankruptcy to small, closely-held corporations." 417 F. Supp. at 184. That court found authority to modify the general rule in "the inherent power of a court to supervise the proper administration of justice." *Id.* The Supreme Court, however, has criticized the *In re Holliday's* decision and reinforced the unqualified nature of the rule. See *Rowland*, 506 U.S. at 202 n.5.

Neman Bros., 17 CIT at 182, 817 F. Supp. at 968 (granting defendant's motion to strike response and granting sixty-day extension of time to enter an answer).

In accordance with the foregoing, it is hereby

ORDERED that Plaintiff's Response to Defendant's Motion to Dismiss, filed on December 9, 2005, is stricken from the record; and it is further

ORDERED that the portion of Defendant's brief of December 21, 2005 that replies to Plaintiff's stricken response brief, be similarly stricken from the record, and it is further

ORDERED that Plaintiff shall have ten (10) days to file a response, if any, to Defendant's Motion to Dismiss; and it is further

ORDERED that any such response be submitted by Mr. Patrick, unless Mr. Patrick withdraws from the case in accordance with the applicable procedures under USCIT R. 75(d); and it is further

ORDERED that failure to submit either (1) a response or (2) a withdrawal and a subsequent or concurrent motion for an extension of time to respond to Defendant's Motion to Dismiss, will result in the Court ruling on the Motion to Dismiss forthright and upon its own deliberations without benefit of consulting any papers in response to said motion.

SO ORDERED.

Slip Op. 06-13

GUANGDONG CHEMICALS IMPORT & EXPORT CORPORATION, Plaintiff,
v. UNITED STATES, Defendant.

Before: Restani, Chief Judge
Court No. 05-00023

OPINION

[Results of Department of Commerce Periodic Review on Antidumping Duty Order on Sebacic Acid from the People's Republic of China Remanded.]

Dated: January 25, 2006

Garvey Schubert Barer (Ronald M. Wisla and William E. Perry) for the plaintiff.

Peter D. Keisler, Assistant Attorney General, *David M. Cohen*, Director, *Jeanne E. Davidson*, Deputy Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*David S. Silverbrand*), *Arthur D. Sidney*, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for the defendant.

Restani, Chief Judge: Guangdong Chemicals Import and Export Corporation ("Guangdong") appeals from a ruling by the Department

of Commerce ("Commerce" or "the Department") conducting an administrative review of an antidumping duty order entered against sebacic acid from the People's Republic of China ("China"). See *Sebacic Acid from the People's Republic of China*, 69 Fed. Reg. 75,303 (Dep't Commerce Dec. 16, 2004) (final results of antidumping admin. review). Guangdong alleges that the review should be dismissed for lack of service or remanded for lack of substantial evidence supporting Commerce's calculation of the surrogate value of the input factor sebacic acid and failure to properly credit by-product offsets.

Commerce's failure to properly serve Guangdong was harmless error, but the determination is remanded as to the surrogate value for sebacic acid and by-product credit.

BACKGROUND

The facts of this case may neatly be divided into two parts. The first set of relevant facts relate to the circumstances surrounding Genesis Chemical Corp.'s ("Genesis") failure to serve Guangdong. On July 2, 2003, Commerce published notice of an opportunity to request review of an antidumping duty order entered against exporters of sebacic acid from China. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 Fed. Reg. 39,511 (Dep't Commerce July 2, 2003) (opportunity to request administrative review). On July 21, 2003, Genesis submitted a request that Commerce perform an administrative review of sebacic acid from two specific companies, Tianjin Chemical Import and Export Co. and Guangdong. See Letter from Greg E. Mitchell, Frost Brown LLC, to the Assistant Sec'y for Imp. Admin, Int'l Trade Admin. (Jul. 21, 2003), P.R. Doc. 2, Pl.'s App. Tab 2. In mid-July, counsel for Genesis contacted an employee of the Department of Commerce to inquire whether the firm was required to serve its client's request for administrative review on parties on the public service list. See Memorandum from Michael Strollo, Senior Analyst, Dep't of Commerce to Louis Apple, Office Director, Dep't of Commerce (Aug. 22, 2003), P.R. Doc. 6, Pl.'s App. Tab 4, at 1 [hereinafter *Service Mem.*]. A Commerce employee stated that no service was necessary because no public service list had yet been generated. *Id.* Counsel for Guangdong received an antidumping review questionnaire on August 14, 2003, which was its first notice of the review. See Letter from Ronald M. Wisla, Garvey Schubert Barer, to Donald Evans, Sec'y of Dep't of Commerce (Aug. 20, 2003), P.R. Doc. 4, Pl.'s App. Tab 3, at 1-2. On August 20, Guangdong sent Commerce a letter requesting that Commerce decline review because it had not been properly served. *Id.*

Commerce published a notice of initiation on August 22, 2003. *Initiation of Antidumping and Countervailing Duty Reviews and Request for Revocation in Part*, 68 Fed. Reg. 50,750 (Dep't Commerce Aug. 22, 2003). That day, it also entered a memorandum into its files

recognizing that Genesis had failed to serve Guangdong within the regulatory time-frame established by 19 C.F.R. § 351.303(f)(3)(ii) (2005). See *Service Mem.*, Pl.'s App. Tab 4. The memorandum stated that Genesis would be allowed to cure its deficient service by serving the request on or before August 29, 2003. *Id.*, Pl.'s App. Tab 4, at 1-2. Genesis served Guangdong on August 26. Letter from Greg E. Mitchell, Frost Brown Todd LLC, to Assistant Sec'y for Imp. Admin, Int'l Trade Admin. (Aug. 26, 2003), P.R. Doc. 9, Def.'s App. Tab 1.

The second set of facts relate to Commerce's method of calculating a surrogate value for sebacic acid. Guangdong purchases its sebacic acid from a producer named Hengshui Dongfeng Chemical Co. Ltd. ("Hengshui"). See Sections C and D Response of Guangdong Chems. Imp. & Exp. Corp. Group (Nov. 4, 2003), P.R. Doc. 21, Pl.'s App. Tab 13, at D-1. Sebacic acid production results in the creation of a co-product, capryl alcohol. *Prelim. Valuation of Factors of Prod.*, Memorandum from Greg Kalbaugh, Dep't of Commerce, to File (Jul. 30, 2004), P.R. Doc. 47, Pl.'s App. Tab 6, at 4 [hereinafter *Prelim. Valuation of Factors of Prod. Mem.*]. In order to calculate Hengshui's production costs for sebacic acid, Commerce allocated production costs between the two products based on their relative sales values in India. *Id.*, Pl.'s App. Tab 6, at 4. Because India does not produce sebacic acid, Commerce relied on import statistics to estimate the value of sebacic acid in India. *Id.*, Pl.'s App. Tab 6, at 1-2. Commerce used statistics from the Indian Department of Commerce's Import/Export Data Bank (the "Indian government statistics"), which lumped sebacic with azelaic acid (a common derivative of sebacic acid) under Indian Harmonized Tariff Schedule ("HTS") subheading 291713. *Id.*, Pl.'s App. Tab 6, at Attach. 4. Guangdong proposed using surrogate value data for sebacic acid maintained by the Indian publication Chemical Weekly (the "Chemical Weekly data"), which was based on a selection of the Indian government data, but was further subdivided and included a specific subheading for sebacic acid (291713.02). *Guangdong Chems. Imp. & Exp. Co. Case Br.* (Sept. 20, 2004), P.R. Doc. 65, Pl.'s App. Tab 8, at 2-3 [hereinafter *Guangdong Case Br.*]. Based on this data, Guangdong argued that the value of sebacic acid in India during the Period of Review ("POR") was \$3,551.73 per metric ton. *Id.*, Pl.'s App. Tab 8, at 7. Guangdong corroborated its proposed value with data from U.S. import statistics for sebacic acid, published Indian prices for oxalic acid (asserted to be similar to sebacic acid), and benchmark price data from the publication Chemical Market Reporter. *Id.*, Pl.'s App. Tab 8, at 6-7.

Commerce refused to use the Chemical Weekly data, stating that its authenticity could not be verified, and that the data, which relied on two shipments totaling 1,400 kilograms, did not "represent a sufficiently broad range of import values on which to base the surrogate value for sebacic acid." See *Issues & Decision Mem. for the Anti-dumping Duty Admin. Review of Sebacic Acid from the People's Re-*

public of China (Dec. 10, 2004), P.R. Doc. 80, Pl.'s App. Tab 10, at 7 [hereinafter *Issues & Decision Mem.*]. Recognizing that HTS 291713 was a basket category including both sebacic and azelaic acid, Commerce conducted additional research to determine whether prices for azelaic acid and sebacic acid were similar. See *Comparison of U.S. Int'l Trade Comm'n Dataweb Values for Sebacic Acid & Azelaic Acid Imps. to the U. S.*, Memorandum from Jennifer Moats, Dep't of Commerce, to File (Dec. 10, 2004), P.R. Doc. 79, Pl.'s App. Tab 11, at 1 [hereinafter *Price Comparison Mem.*]. It concluded that the two products were similarly priced, varying only by \$0.30 per kilogram over a twenty-three month period during which the price for sebacic acid ranged between \$2 and \$3 per kilogram. *Id.*, Pl.'s App. Tab 11, at 1. Commerce therefore used the basket category Indian government statistics to determine the surrogate value of sebacic acid, calculating the surrogate value of sebacic acid in India to be \$15,826.30 per metric ton. See *Issues & Decision Mem.*, Pl.'s App. Tab 10, at 9 (electing to use Indian government statistics); see also *Prelim. Valuation of Factors of Prod. Mem.*, Pl.'s App. Tab 6, at 4 (using Indian government statistics to arrive at \$15,826.30 per-metric-ton value for sebacic acid).

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction to review Commerce's administration of an antidumping review under 28 U.S.C. § 1581(c) (2000). The Court will uphold an administrative decision unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (2000).

DISCUSSION

I. Failure To Serve Notice

A. Genesis Did Not Make A Reasonable Attempt to Serve Guangdong Under 19 C.F.R. § 351.303(f)(3)(ii).

A petitioner requesting an administrative review of an antidumping order "must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request . . . by the end of the anniversary month or within ten days of filing the request for review, whichever is later." 19 C.F.R. § 351.303(f)(3)(ii). A petitioner has the responsibility to serve a specified exporter whether or not that exporter appears on Commerce's service list; however, if the interested party is "unable to locate a particular exporter or producer . . . the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person." *Id.*

A Commerce employee advised Genesis that no service was necessary at the time it filed its petition for review because no public service list had yet been generated. Genesis understood this advice to mean that it did not have to serve Guangdong with notice of its request for review despite its obligations under 19 C.F.R. § 351.303(f)(3)(ii). Although the petitioners "misconstrued" Commerce's instruction, Commerce granted Genesis additional time in which to "remedy the procedural deficiency." *Service Mem.*, Pl.'s App. Tab 4, at 1. This was done by letter thirty-six days after Genesis's initial request and four days after the initiation of review.

Genesis's call to Commerce cannot be considered a "reasonable attempt." Reliance on faulty agency advice, or a misinterpretation of agency advice, does not excuse a party from failing to comply with the law. See *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947) ("[E]veryone is charged with knowledge of the United States Statutes at Large, [and] Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents."); *Cathedral Candle Co. v. U.S. Int'l Trade Comm'n.*, 285 F. Supp. 2d 1371, 1378 n.10 (CIT 2003) ("It is well established by both statutes and cases that the publication of an item in the Federal Register constitutes constructive notice of anything within that item."). To say that Genesis's inquiry with Commerce by itself constituted a reasonable attempt at service would imply that Genesis is not charged with knowledge of Commerce's regulations. It is undisputed that Genesis was aware of, and provided Commerce with, Guangdong's location and that Genesis was not prevented in any way from serving Guangdong. Failure to serve cannot be excused by Genesis's failure to read the relevant regulation.

This court has suggested that a party may make a "reasonable attempt" at service by "curing" faulty service after discovering the defect. See *PAM, S.P.A. v. United States*, 395 F. Supp. 2d 1337, 1342-43 (CIT 2005). In that case, the court voided an administrative review for failure to comply with the service requirements of 19 C.F.R. § 351.303(f)(3)(ii). *Id.* at 1344. It distinguished another opinion, *NSK, Ltd. v. United States*, 346 F. Supp. 2d 1312, 1325 (CIT 2004), that refused to void an administrative review for failure to comply with the same regulatory provision. *PAM*, 395 F. Supp. 2d at 1343 n.2. In *NSK*, the petitioner failed to serve notice on a respondent under § 351.303(f)(3)(ii) until after the notice of initiation was published in the Federal Register. 346 F. Supp. 2d at 1323-24. Upon discovering its mistake, the petitioner faxed notice to the respondent. *Id.* at 1324. The court in *PAM* argued that a reasonable attempt at service had been made in *NSK* because "upon discovery of lack of service, petitioner attempted to cure its defective service by facsimile service." *PAM*, 395 F. Supp. 2d at 1343 n.2. Assuming that a party may attempt service by "curing" their default after the time for service has passed, Genesis's service would still not constitute a "rea-

sonable attempt." In *NSK*, the petitioner, apparently of its own accord, realized its own mistake the day after initiation and immediately sought to serve the respondent. See Decision Mem., A-100-001 at 94 (Aug. 3, 2002) (ball bearings and parts thereof), available at <http://ia.ita.doc.gov/frn/summary/2002aug.htm>. In this case, Commerce published its notice of initiation while instructing Genesis to cure its mistake.¹ Only after Commerce's prompting did Genesis attempt to "cure" this error.

B. Commerce's Obligation to Abide By Its Own Regulations

Commerce asserts that it was within its discretion to relax its procedural rules regarding service in the interests of justice. No statute requires a petitioner to serve a respondent when it requests an administrative review. Nevertheless, in enforcing the antidumping laws, Commerce has created a regulation obligating a party requesting a review to serve a proposed respondent with notice. Having exercised its discretion to create such a requirement, Commerce is generally required to play by its own rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring in part and dissenting in part) (recognizing a "judicially evolved rule of administrative law" that "he who takes the procedural sword shall perish with that sword").

The Supreme Court has not held, however, that the courts are required to reverse subsequent agency action on the basis of any procedural misstep, no matter how minute or inconsequential. Thus, judicial review of agency action is conducted with "due account . . . of the rule of prejudicial error." 5 U.S.C. § 706 (2000).² If, as is often the case, no law or regulation specifies the consequence of non-compliance with a regulation, the court must determine what remedy, if any, should be imposed. In this endeavor, the court is guided by the Supreme Court's opinion in *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532 (1970). First, it must be determined whether the regulation in question was "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion" or if the "agency [was] required by rule to exercise independent discretion [but] has failed to do so." *Id.*

¹ The court also notes that the terms of the regulation require a reasonable attempt at service to take place before the Secretary accepts a petition for administrative review. See 19 C.F.R. § 351.303(f)(3)(ii) (allowing Secretary to accept review "if . . . satisfied that the party made a reasonable attempt to serve a copy of the request on such person") (emphasis added). The regulation nowhere provides for the Secretary to accept a petition conditioned on a future attempt to serve.

² 19 U.S.C. § 1677c(b) (2000) provides that administrative hearings in antidumping duty reviews are "not subject to the provisions of subchapter II of chapter 5 of title 5, or to section 702 of such title" of the Administrative Procedures Act ("APA"). These provisions do not apply to 5 U.S.C. § 706, which is located in chapter 7 of the APA.

at 538-39; see also *Lopez v. Fed. Aviation Admin.*, 318 F.3d 242, 247 (D.C. Cir. 2003). If the regulation was not so intended, but, for example, was intended to ease the agency's administrative burden, the court considers whether the party challenging agency action has shown that it was substantially prejudiced by the agency's failure to comply with its rules. See *Lopez*, 318 F.3d at 247. If substantial prejudice is shown, the administrative action is reversed, if not, it is affirmed. See *Dixon Ticonderoga Co. v. U.S. Customs & Border Prot.*, 366 F. Supp. 2d 1352, 1357 (CIT 2005).

If the violated regulation was intended to confer important procedural benefits, the result is less clear. Some courts applying the *American Farm Lines* test have automatically reversed agency action. See *Port of Jacksonville Maritime Ad Hoc Comm., Inc. v. U.S. Coast Guard*, 788 F.2d 705, 708 (11th Cir. 1986); *Alamo Express, Inc. v. United States*, 613 F.2d 96, 97-98 (5th Cir. 1980).

In contrast, the District of Columbia Circuit has found that harmless error should be considered in the context of a regulation providing important procedural safeguards to an employee facing termination by the Federal Aviation Administration ("FAA"). *Lopez*, 318 F.3d at 248. In *Lopez*, the court specifically found that

the FAA's procedures challenged by *Lopez* are not primarily intended to provide information to the agency, but are instead aimed at protecting the [employee] from the Administrator's otherwise unlimited discretion. It is uncontested that FAA Orders 8110.37C and 8130.24 provide procedural safeguards that are the only available protection for [employees] whose designation can otherwise be terminated by the FAA for "any reason considered appropriate by the Administrator."

Id. at 247-48 (quoting 49 U.S.C. § 44702(d)(2)). Despite finding that the rules provided procedural benefits for employees, the court nonetheless refused to reverse the FAA's employment decision because *Lopez* did not show he was "pressed for time in responding to the FAA's view of his performance or that other defenses would have been presented with additional time." *Id.* at 248. He therefore "fail[ed] to show that the FAA's initial oversight was other than harmless." *Id.*

Other courts have dispensed with the inquiry of whether a regulation provides important procedural benefits and have gone straight to the question of prejudice. For example, the court of Appeals for the Ninth Circuit held in the context of a deportation proceeding that a "[v]iolation of a regulation renders a deportation unlawful only if the violation prejudiced interests of the alien which were protected by the regulation." *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979).

More recently, the Second Circuit refused to require proof of prejudice in all cases, but found that agency action will be voided auto-

matically for failure to follow its regulations only if it affects "fundamental rights derived from the Constitution or a federal statute." *Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1994). In *Waldron*, the court considered two INS regulations, 8 C.F.R. § 242.2(g) (1994), which required an alien to be notified of his right to contact a consular official when taken into custody, and 8 C.F.R. § 3.7, which provided that an Immigration Judge's decision must include a certificate of notice if its opinion must be certified to the Board of Immigration Appeals, if known at the time the opinion was filed. *Id.* at 515-16. The court held that

we believe that, when there is a regulation which relates to less fundamental, agency-created rights and privileges, the wholesale remand of cases, where no prejudice has been shown to result from the INS's failure to strictly adhere to its regulations, would place an unwarranted and potentially unworkable burden on the agency's adjudication of immigration cases.

Id. at 518; see also *Chong v. INS*, 264 F.3d 378, 390 (3d Cir. 2001) (following *Waldron*).³

No case from the Federal Circuit applies the *American Farm Lines* test in the context of a regulation intended to confer important procedural benefits, and it is not clear which approach the appellate court would adopt. *Kemira Fibres Oy v. United States*, 61 F.3d 866 (Fed. Cir. 1995), applied the *American Farm Lines* substantial prejudice test to a Commerce regulation requiring publication of any "notice of intent to revoke [an antidumping duty] order" no later than five anniversary-months after receiving its last request for administrative review. *Id.* at 869 (citing 19 C.F.R. § 353.25(d) (1995)). The court was careful to note that the regulation in question was a "merelyprocedural aid[]" to accomplishing the goal of the antidumping laws to provide "notification of domestic parties so that their interest in revocation of an outstanding order may be ascertained and addressed." *Id.* at 875. Because the regulation was "merely procedural" the court required the plaintiff to "establish that it was prejudiced by Commerce's non-compliance with this requirement." *Id.*

Other cases from the Federal Circuit have dispensed with the inquiry into whether a regulation is "merely procedural" and held that "[i]t is well settled that principles of harmless error apply to the review of agency proceedings." *Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394 (Fed. Cir. 1996). In that case, the Customs Service ("Customs") published regulations requiring a district director, prior to extending the liquidation period for entered goods, promptly to no-

³The Fourth Circuit has reserved the question of when prejudice is presumed after an agency fails to comply with its own regulations in the context of a regulation governing representation of prisoners during a hearing to determine whether medication should be involuntarily administered. *United States v. Morgan*, 193 F.3d 252, 267 (4th Cir. 1999).

tify an importer and its surety "on Customs Form 4333-A . . . that the time has been extended and the reasons for doing so." *Id.* at 393 (quoting 19 C.F.R. § 159.12(b) (1996)). In *Intercargo*, Customs sent a notice to sureties that did not state which of the statutorily authorized reasons for the extension was relied on, and thus "did not satisfy the requirement of the regulation." *Id.* at 394. Applying principles of harmless error, the court first found that neither the regulation, nor the governing statute, provided a consequence for the failure to send proper notice under § 159.12(b). *Id.* at 394-96. The court then determined that the regulation was "amenable to harmless error analysis," noting that "a plaintiff 'should not become immune from the antidumping laws because Commerce missed the deadline.'" *Id.* at 396 (quoting *Kemira Fibres Oy*, 61 F.3d at 873). The court concluded that "[t]he public interest in the administration of the importation laws should not 'fall victim' to the failure by the Customs Service to use the requisite language in its extension notices, if the oversight has not had any prejudicial impact on the plaintiff." *Id.* at 396 (quoting *Kemira Fibres Oy*, 61 F.3d at 873).

Likewise, in *Belton Industries, Inc. v. United States*, 6 F.3d 756, 761 (Fed. Cir. 1993), the court of appeals found that Commerce "violated 19 C.F.R. § 355.25(d)(4)(ii)" by failing to "send written notice to the appellees . . . despite its prior recognition of them as interested parties." Commerce had instead sent written notice of initiation of a sunset review to the appellees' counsel and a trade association of which the appellees were members. The court declined to void the subsequent agency action, noting that "appellees suffered no prejudice" and that appellees' counsel received actual notice of the proposed action. *Id.* The court ruled that the failure to abide by Commerce's own regulations was "harmless error." *Id.*

Although *Kemira Fibres Oy*, *Intercargo* and *Belton* all upheld agency action, the three cases can be read as standing for different propositions. On one hand, *Kemira* implies (but is not premised on) the stricter approach of the Fifth and Eleventh Circuits, presuming prejudice when an agency fails to follow its regulations that are intended to confer a procedural benefit. On the other hand, *Intercargo* and *Belton* can be seen as similar to the approach of the Ninth and Second Circuits, which do not presume prejudice in all cases where an agency fails to abide by its regulations that are intended to confer procedural benefits. See *Atteberry v. United States*, Slip Op. 03-93, 2003 WL 21748674, at *11 n.40 (CIT Jul. 28, 2003) ("*Intercargo* - and cases that have followed it, such as [*Cummins Engine Co. v. United States*, 23 CIT 1019, 1032, 83 F. Supp. 2d 1366, 1378 (1999)] - can be read to extend *Accardi* and its progeny by requiring 'harmless error' analysis in every case involving an agency's violation of its statute or regulations, without regard to the nature and extent of the remedy sought by the complainant.") (citation omitted).

Additionally, this court has grappled with Commerce's failure to abide by this very regulation in two recent opinions. In *NSK*, the court stated that a nine-day delay in notice resulting from a petitioner's failure to properly serve respondent did not invalidate review because "the regulation here was 'not intended to confer important procedural benefits'" and the plaintiff could not demonstrate substantial prejudice. 346 F. Supp. 2d at 1325 (quoting *Taiyuan Heavy Mach. Imp. & Exp. Corp. v. United States*, 23 CIT 701, 703 (1999)). The court found that "nine fewer days of preparation time, prior even to receipt of Commerce's questionnaire, does not constitute such substantial prejudice that a remand is required on this issue." *Id.* at 1326.

In another case, this court found that 19 C.F.R. § 351.303(f)(3)(ii) "does indeed confer important procedural benefits upon the individual companies involved in normal antidumping administrative reviews." *PAM*, 395 F. Supp. 2d at 1343.⁴ In that case, Commerce allowed a review to proceed although no service occurred before or after the regulatory deadline had passed, unlike *NSK*, where the respondent was eventually served. *Id.* The court in *PAM* voided the administrative review for failure to comply with the regulation's requirements. *Id.* at 1344.

The court believes that the best way to reconcile cases such as *Kemira with Belton* and *Intercargo* is to apply the following process. First, the court will consider whether the regulation (or statute it implements) spells out a remedy for failure to comply. Second, if no remedy is stated, the court will consider whether the regulation in question was intended to provide important procedural benefits. Third, if the regulation is not intended to provide important procedural benefits, Commerce's action will be voided only if the plaintiff can show it in fact suffered substantial prejudice.⁵ If the regulation is intended to provide important procedural benefits, the court will void the agency action unless the agency demonstrates that the violation was harmless error. *Cf. Wilson v. Comm'r Soc. Sec.*, 378 F.3d 541, 547 (6th Cir. 2004) (stating in dicta that an agency's failure to follow a regulation "creating an important procedural safeguard for claimants for disability benefits" might nonetheless "constitute harmless error").

⁴ As noted above, the *PAM* court distinguished *NSK* on the grounds that Commerce "cured" the defect once it was discovered, leading to a "reasonable attempt" at service within the terms of the regulation. *PAM*, 395 F. Supp. 2d at 1343 n.2. *NSK's* discussion of *American Farm Lines* was therefore treated as dicta.

⁵ See, e.g., *Dixon Ticonderoga*, 366 F. Supp. 2d at 1357 (CIT 2005) (voiding agency action for failure to comply with 19 C.F.R. § 159.62(a) (2003), which requires a notice of intent to distribute funds obtained pursuant to antidumping duty orders under the "Byrd Amendment," 19 U.S.C. § 1675c (2000), despite finding that the regulation in question was "merely [a] procedural aid[]," because plaintiffs failed to show substantial prejudice).

This approach has the virtue of recognizing Commerce's responsibility to comply with its regulations, especially regulations intended to benefit participants in the administrative process, while avoiding a rigid rule that would mandate reversal based on a court's construction of regulatory intent alone, with little or no reference to the facts of a particular case.⁶ This rule also allows the court to follow the *American Farm Lines* test, as applied in cases such as *Kemira*, while heeding the language of the APA, which requires that "due account shall be taken of the rule of prejudicial error." 5 U.S.C. § 706. Applying this test, the court finds that even if it is assumed that § 351.303(f)(3)(ii) was intended to provide an important procedural benefit, failure to provide service until after commencement of the review process in this case constituted only harmless error.

The regulation in question here, 19 C.F.R. § 351.303(f)(3)(ii), does not state consequences for failure to comply. See *NSK*, 346 F. Supp. 2d at 1325. The regulation is intended to confer a procedural benefit – service of notice provisions generally provide predictability in the administrative review process, and time for respondents to prepare a response.⁷ *PAM*, 395 F. Supp. 2d at 1343. The notification provision at issue in *Intercargo*, for example, was designed "to increase certainty in the customs process by apprising the importer and its surety of the precise period within which final action would be taken on the liquidation. . . ." 83 F.3d at 396. Similarly, the D.C. Circuit has found that the FAA's failure to comply with a regulation requiring thirty days notice prior to termination of an employment contract was a procedure "aimed at protecting the [employee] from the Administrator's otherwise unlimited discretion." *Lopez*, 318 F.3d at 248. Respondents such as Guangdong rely on service of notice provisions, such as § 351.303(f)(3)(ii), to provide greater regularity in the administrative process and an opportunity to prepare for participation in an investigation before it begins. Thus, Guangdong will not be required to show that it suffered substantial prejudice in order to void the administrative review.

The mere fact that Guangdong is not required to show substantial prejudice does not mean that the court must void agency action that is conceded to have caused no harm at all. While Guangdong need not show "substantial prejudice," Commerce may show that the agency oversight was harmless error. At oral argument, counsel for

⁶The court needs not decide here how "substantial prejudice" differs from "harmless error." In the circumstances of this case, it is enough to note that, at oral argument, Guangdong in essence conceded that Commerce's failure to comply with § 351.303(f)(3)(ii) did not cause even a *de minimis* injury related to the rights and interests that the regulation protects.

⁷The regulatory history for 351.303(f)(3)(ii) is very limited. The federal register notice proposing the provision states only that "[p]aragraph (f)(3)(ii) is new, and clarifies the requirements for service of requests of review." *Notice of Proposed Rulemaking & Request for Pub. Comments*, 61 Fed. Reg. 7308, 7326 (Dep't Commerce Feb. 27, 1996).

Guangdong stated that it was not prevented in any way from preparing for, or participating in, the administrative review. Guangdong affirmatively stated that it suffered no prejudice, other than the fact that the administrative review took place. The plaintiff in *Intercargo* made a similar argument that "the prejudice flowing from this circumstance [failure to fully comply with a notice regulation] is the ultimate prejudice – the wrongful imposition of customs duty." 83 F.3d at 396. The Federal Circuit disagreed, stating that the loss of a case "is not what is meant by prejudice as used in this context." *Id.* There must instead be some indication that failure to comply with the regulation in some way inhibited Guangdong's presentation of its case. *See id.* at 396 ("Prejudice, as used in this setting, means injury to an interest that the statute, regulation, or rule in question was designed to protect."). Because Guangdong in essence conceded that the failure to serve was harmless error, Commerce has met its burden to show its error was harmless. Guangdong's request that Commerce's administrative review be voided *ab initio* is denied.

II. Commerce's Choice of Data Source Is Not Supported by Substantial Evidence

Commerce is given wide discretion in the selection of data sources for use in administrative review. *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999). The role of the court is to determine whether Commerce's choice of data was reasonable. When choosing a data source to estimate the surrogate value of an input, Commerce looks to a number of factors, including: 1) whether the data reflects non-export average values; 2) whether the data is contemporaneous with the period of investigation ("POI"); 3) whether the data is product specific; and 4) whether the data excludes taxes in its price. *Taiyuan*, 23 CIT at 706 (1999) (citing *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China*, 63 Fed. Reg. 16,758, 16,759 (Dep't Commerce Apr. 6, 1998) (final results of antidumping duty administrative reviews)). Guangdong concedes that the data it proposed and the data used by Commerce are identical with respect to all of these factors except for product specificity.

Because India does not produce sebacic acid domestically, both Commerce and Guangdong relied on statistics of imports of sebacic acid into India to establish its surrogate value. As discussed, Commerce used import statistics based on the six-digit Indian HTS subheading 291713, a basket tariff category that includes both sebacic acid and azelaic acid. *See Issues & Decision Mem.*, Pl.'s App. Tab 10, at 8–9.

Guangdong submitted comments requesting that Commerce adopt data taken from the Indian publication *Chemical Weekly* based on 1,400 kilograms of sebacic acid imported in two transactions from Germany to India. *See Letter from Ronald M. Wisla, Garvey*

Schubert Barer, to Donald Evans, Sec'y Dep't of Commerce (Sept. 8, 2004) (submission of publically available information for use as surrogate value), P.R. Doc. 62, Pl.'s App. Tab 7, at Attach. 1 [hereinafter *Guangdong Surrogate Value Submission*].

Commerce expressed two reasons for rejecting the Chemical Weekly data. First, Commerce found that the Chemical Weekly data contained insufficient data points and "therefore [did not] represent a sufficiently broad range of import values on which to base the surrogate value for sebacic acid where alternative data are available." *Issues & Decision Mem.*, Pl.'s App. Tab 10, at 7. Second, Commerce could not determine the accuracy of the Chemical Weekly data because it could not tell how the data was culled from the Indian government import statistics. *Id.*

In support of its own data, Commerce only conducted research into the relative prices of azelaic and sebacic acid in the United States to assure that the two products were similarly priced over a twenty-three-month period, determining that "[b]ecause the record does not include any technical information on the more specialized production requirements for azelaic acid and because the attached dataweb query shows that the prices are not consistently higher than those for sebacic acid, we are unable to determine that azelaic acid is a specialty product." *Price Comparison Mem.*, Pl.'s App. Tab 11, at 1. Commerce therefore found that "[t]he prices for azelaic acid and sebacic acid fluctuate with sebacic acid sometimes having the higher price, and, therefore, we do not see a clear pattern that azelaic acid is a higher priced product." *Issues & Decision Mem.*, Pl.'s App. Tab 10, at 8.

Even if the court were to conclude that Commerce produced substantial evidence demonstrating that azelaic and sebacic acid are priced similarly, that would not justify Commerce's decision to abandon a more product-specific data source. Commerce failed to address the data Guangdong used to corroborate its Chemical Weekly submission. Guangdong admitted the small size of its sample but submitted evidence designed to prove that the data were not aberrational. It corroborated its data using an average unit value of \$3,061.54 per metric ton for sebacic acid in the United States (excluding data from non-market economies and subsidizing nations), data published in the September 6, 2004 edition of Chemical Market Reporter (listing sebacic acid in drums as \$4,187.60 per metric ton), and data from Chemical Weekly for the POI reflecting the price of oxalic acid (asserted to be similar to sebacic acid) in India as \$469.66 per metric ton. *Guangdong Surrogate Value Submission*, Pl.'s App. Tab 7, at 2-3.

Neither the *Final Determination* and the attached *Issues and Decision Memorandum* nor Commerce's brief specifically discusses the corroborating evidence Guangdong submitted to support the use of

its product-specific import data, nor does either provide evidence demonstrating that the values were in fact aberrational. Commerce's only objection, besides the small size of the sample, is that it "cannot determine how this categorization was derived from the official Indian government statistics." *Issues & Decision Mem.*, Pl.'s App. Tab 10, at 8-9.

The Supreme Court has "frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner. . . ." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983). "The agency must explain the evidence which is available, and must offer a 'rational connection between the facts found and the choice made.'" *Id.* at 52 (quoting *Burlington Truck Lines, Inc. v. United States*, 317 U.S. 156, 168 (1962)). Although an agency is not required to comment on every submission it receives, a pertinent submission, such as Guangdong's corroborating evidence, should not be ignored. See *Nat'l Ass'n of Mirror Mfrs. v. United States*, 12 CIT 771, 780, 696 F. Supp. 642, 649 (1988) (the agency must discuss "material issues of law or fact"). This is particularly true in a case such as this, where Commerce departs from its generally expressed preference for product-specific data. See *Save Domestic Oil, Inc. v. United States*, 357 F.3d 1278, 1283-84 (Fed. Cir. 2004).

Additionally, Commerce failed to consider or explain why its own sample of 10,100 kilograms of sebacic and azelaic acid was not aberrational compared with the same basket category in other years. "[I]f . . . import statistics are based on a small quantity of imports for the period of investigation, the Commerce practice is to determine if the price for those imports is aberrational." *Shanghai Foreign Trade Enters. Co., Ltd. v. United States*, 318 F. Supp. 2d 1339, 1350 (CIT 2004) (citing *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 23 CIT 479, 485, 59 F. Supp. 2d 1354, 1360 (1999)).

Guangdong identified for Commerce a number of logical inconsistencies in its surrogate value for sebacic acid that should have prompted Commerce to examine its own data. Guangdong argued that Commerce's value of \$15,826.30 was over six times the commercial value of the product. *Guangdong Surrogate Value Submission*, Pl.'s App. Tab 7, at 1-2. Additionally, in the 2000-2001 administrative review, *Sebacic Acid from the People's Republic of China*, 67 Fed. Reg. 69,719 (Nov. 19, 2002) (final results of antidumping duty administrative review), Commerce found the same basket category established a surrogate value of \$5,388.66 per metric ton. See *Decision Mem.*, A-570-825 at 17 (Mar. 23, 2005), available at <http://ia.ita.doc.gov/frn/summary/2005mar.htm> (discussing surrogate value

of sebacic acid used in 2002).⁸ Commerce noted Guangdong's objection that the surrogate value was "over six times the commercial value of the subject merchandise," but did not cite evidence explaining the inconsistency. *Issues & Decision Mem.*, Pl.'s App. Tab 10, at 3, 8-9. Nor did Commerce determine the total size of the Indian sebacic acid market to determine if it was commercially and statistically significant. Having failed to consider whether the \$15,826.30 figure derived from the basket category was aberrational despite evidence of its wide variation from the value of the same basket category in another year, Commerce failed to present substantial evidence supporting its surrogate value for sebacic acid. See *Timken U.S. Corp. v. United States*, 421 F.3d 1350, 1355 (Fed. Cir. 2005) (agency decision not supported by substantial evidence if the agency "entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency'") (quoting *State Farm*, 463 U.S. at 43) (emphasis removed). Accordingly, the court will remand this issue to Commerce for reconsideration.

III. By-Product Credit

Commerce requests that the court remand Commerce's application of the by-product credit. The issue is remanded.

CONCLUSION

Commerce's calculation of the surrogate value of sebacic acid is not supported by substantial evidence and is therefore REMANDED for further consideration consistent with this opinion. Commerce's application of the by-product credit is likewise remanded. Commerce shall reconsider these matters and issue a determination within 45 days after the issuance of this opinion. Guangdong will have 15 days to file objections to Commerce's remand determination. Commerce will have 11 days to file its response.

⁸The Court also notes that Commerce recently abandoned a surrogate value of \$15,826.30 for sebacic acid in the context of another administrative review. Decision Mem., A-570-825 (Mar. 23, 2005), available at <http://ia.ita.doc.gov/frn/summary/2005mar.htm>. Commerce found that "information on the record of this changed circumstances review indicates that the POR average sebacic acid surrogate value in the Indian six-digit category that we used in the preliminary results of this changed circumstances review is significantly higher than the import value of the previous period." *Id.* at 17. Commerce therefore eliminated the highest and lowest value countries (imports from the United States and Germany, respectively) and arrived at a value of \$5,459.72 per metric ton, "which was in line with other sebacic acid prices on the record." *Id.*

Slip Op. 06-14

HENRY H. WOOTEN, III Plaintiff, v. UNITED STATES, SECRETARY OF AGRICULTURE, Defendant.

Before: WALLACH, Judge
Court No.: 05-00208

[Plaintiff's Motion to Supplement the Record is Granted]

Dated: January 25, 2006

Miller & Chevalier Chartered, (Myles S. Getlan, and Daniel P. Wendt) for Plaintiff. Peter D. Keisler, Assistant Attorney General; David M. Cohen, Director; Patricia M. McCarthy, Assistant Director; Delfa Castillo, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch; and Jeffrey Kahn, Attorney-Advisor, Office of the General Counsel, International Affairs & Commodity Programs Division, U.S. Department of Agriculture, of Counsel, for Defendant.

OPINION

Wallach, Judge:

I

Introduction

This matter comes before the court following Plaintiff's Motion to Supplement the Record ("Plaintiff's Motion") filed on October 14, 2005. Defendant filed its Memorandum in Opposition to Plaintiff's Motion to Supplement the Record ("Defendant's Opposition") on November 4, 2005. For the reasons set forth below, Plaintiff's Motion is granted. This court has jurisdiction pursuant to 19 U.S.C. § 2395 (2004).

II

Background

Plaintiff is challenging the U.S. Department of Agriculture's ("Defendant" or "Agriculture") denial of TAA cash benefits regarding his catfish crop for the year 2002. This Motion to Supplement the Record arises from Plaintiff's challenge to Defendant's original determination of eligibility for TAA benefits.

Upon commencement of this matter, Defendant filed with the court the administrative record of the case. The administrative record was amended and certified on September 1, 2005.

III

Arguments

Plaintiff requests the court's permission to supplement the record on the grounds that Plaintiff was not notified of the deficiency con-

cerning documentation demonstrating that his net farm income was lower in 2002 than in 2001 until his application for TAA benefits was rejected. Plaintiff asserts that if the Defendant had requested this information prior to making its determination, Plaintiff would have provided the documentation voluntarily and the record would have been complete prior to Defendant's denial of benefits. As a result, Plaintiff wishes to supplement the record with Schedules F from his 2001 and 2002 income tax return because (1) the record is inadequate; and (2) Agriculture has not met the threshold requirement of making a reasonable inquiry in making its decision.

Defendant argues that Plaintiff failed to provide documentation certifying that his net farm income for 2002 was less than 2001 in accordance with Agriculture's deadlines and that this information was therefore not considered by Defendant in making its original determination. Defendant further argues that none of the documents attached to Plaintiff's Motion was before the agency when it made its TAA denial decision and therefore should not be considered by the court in this matter.

IV

Applicable Legal Standard

This court has jurisdiction to affirm or remand the actions of the Secretary of Agriculture "in whole or in part." 19 U.S.C. § 2395(c) (2004). The Department of Agriculture's determination regarding certification of eligibility for TAA will be upheld if it is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 2395(b); *Former Employees of Swiss Indus. Abrasives v. United States*, 17 CIT 945, 947, 830 F. Supp. 637, 639 (1993). The scope of review of the agency's actions is limited to the administrative record. *Defenders of Wildlife v. Hogarth*, 177 F. Supp. 2d 1336, 1342-43. In addition, the Administrative Procedures Act ("APA") provides that agency determinations shall be held invalid if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706 (2004).

V

Discussion

A

Plaintiff's Motion to Supplement the Record is Reasonable and Required Under the Law

Plaintiff argues that he was never notified by Defendant that he had failed to attach Schedules F from his 2001 and 2002 tax returns. Plaintiff's Motion at 4. Plaintiff asserts that the administrative record in this case is deficient because it did not contain his Schedules F and that Agriculture did not make a reasonable inquiry into his eligibility because it failed to notify Plaintiff of this deficiency. *Id.*

at 5. Plaintiff contends that because the most relevant issue in this matter is whether or not Plaintiff's net farm income in 2002 was less than 2001, the absence of Schedules F from the administrative record is critical in the agency's determination. *Id.* Plaintiff also argues that Agriculture's failure to request this critical information does not meet the reasonable inquiry threshold in administrative decisions and therefore its Motion to Supplement the Record should be granted. *Id.* at 5-6 (citing *Trinh v. United States Sec'y of Agriculture*, 395 F. Supp. 2d 1259 (CIT 2005) (quoting *Former Employees of Sun Apparel of Texas v. United States Sec'y of Labor*, Slip Op. 04-106 at 25, 2004 Ct. Int'l Trade LEXIS 105 (CIT Aug. 20, 2004))).

Defendant argues that Plaintiff was required to timely submit documentation verifying that his net farm income was less in 2002 than in 2001 and he failed to provide the Schedules F at the time he certified his application. Defendant's Opposition at 7. Defendant asserts that supplementation of the administrative record is only allowed when there is a "reasonable basis" to believe that the agency's record is materially incomplete" which it says is not the case here. *Id.* Defendant further asserts that since Mr. Wooten signed and certified his application, he understood that his approval for benefits was contingent upon Agriculture receiving supporting documentation, and that he failed to contact Agriculture or provide the requisite information in a timely manner resulting in the denial of TAA benefits. *Id.* at 11. Defendant argues that its denial of Mr. Wooten's application was not a result of the administrative record being incomplete, but rather that it was based on Plaintiff's failure to demonstrate that his net farm income declined between 2001 and 2002. *Id.* at 14. Accordingly, Defendant contends that Plaintiff's Motion should be denied as the record is complete and Plaintiff has not demonstrated any need to re-open it. *Id.*

The Department of Agriculture has discretion in conducting its investigations of TAA claims. This discretion, however, is prefaced by the existence of "a threshold requirement of reasonable inquiry" and investigations which fall below this "cannot constitute substantial evidence upon which a determination can be affirmed." *Former Employees of Sun Apparel of Texas v. United States Sec'y of Labor*, Slip Op. 04-106 at 15. In making its determination, the court must sustain Agriculture's decisions as long as it is "reasonable and supported by the record as a whole." See *Hyundai Elecs. Co. Ltd. v. United States*, 23 CIT 302, 206, 53 F. Supp. 2d 1334, 1338 (1999). The record as a whole consists of the administrative record before the court. See 28 U.S.C. § 2640(c) (2004). Nevertheless, the court will not and "cannot uphold a determination based upon manifest inaccuracy or incompleteness of record when relevant to a determination of fact." *Former Employees of Pittsburgh Logistics Sys. Inc. v. United States Sec'y of Labor*, 2002 CIT 21, 32-33 (CIT 2003). If the court determines that the Defendant did not meet the threshold re-

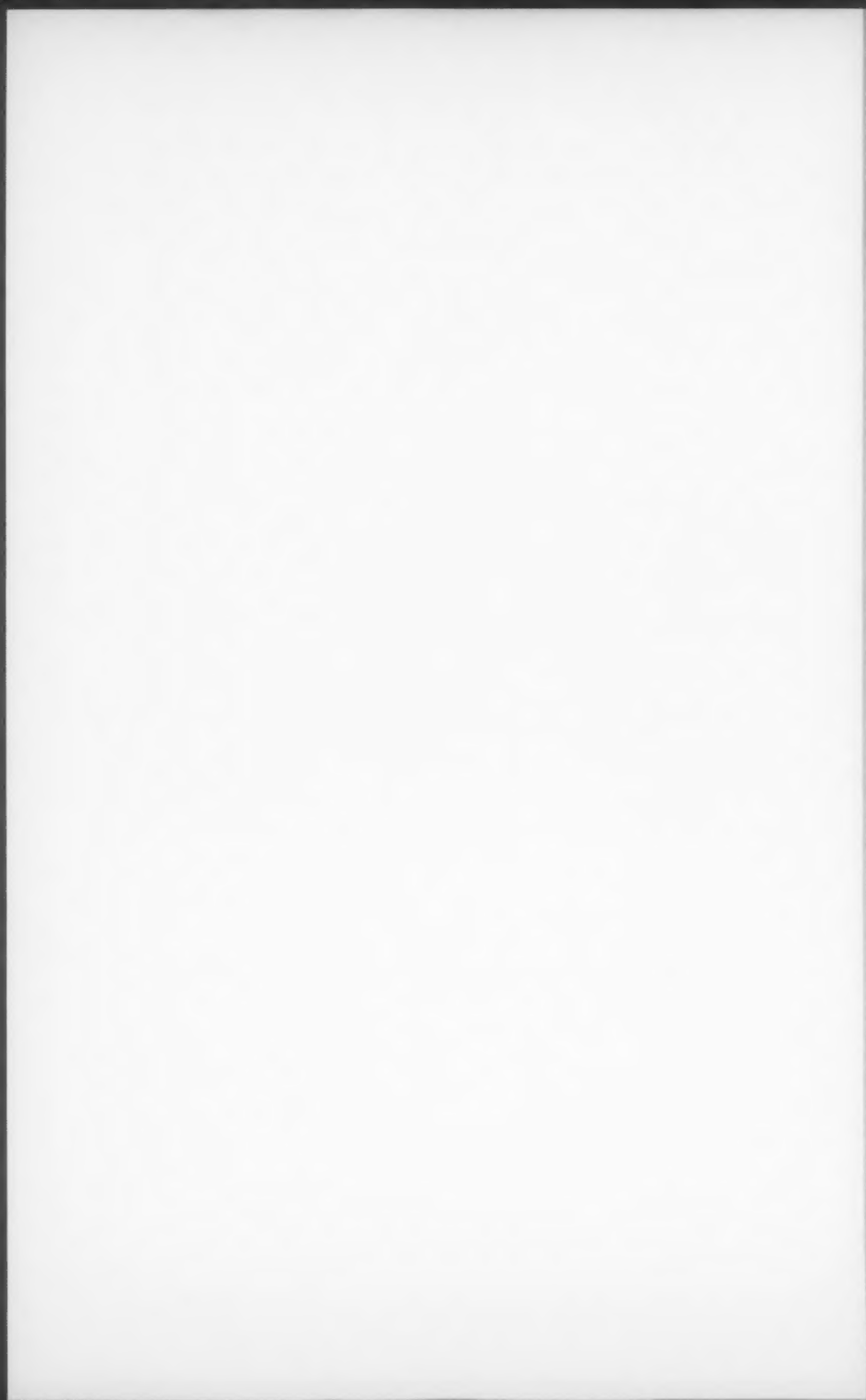
quirement of a reasonable inquiry, the court, for good cause shown, may remand the case to Agriculture to take further action. 19 U.S.C. § 2395(b). Good cause exists "if [Agriculture's] chosen methodology is so marred that [its] finding is arbitrary or of such a nature that it could not be based on substantial evidence." *Former Employees of Galey & Lord Indus. v. Chao*, 26 CIT 806, 809, 219 F. Supp. 2d 1283, 1286 (CIT 2002) (citing *Former Employees of Barry Callebaut v. United States*, 177 F. Supp. 2d 1304, 1308 (2001) (citing *Former Employees of Linden Apparel Corp. v. United States*, 13 CIT 467, 469, 715 F. Supp. 378, 381 (1989) (quoting *United Glass & Ceramic Workers of North America, AFL-CIO v. Marshall*, 189 U.S. App. D.C. 240, 584 F. 2d 398, 405 (D.C. Cir. 1978))).

Agriculture in TAA cases bases its determination of eligibility on whether or not the applicant's net farm income declined between two comparable years. In this case, the Plaintiff needed to demonstrate whether his net farm income declined from 2001 to 2002 and to provide proof of this decline. Agriculture needed certified information such as the Plaintiff's tax records. Agriculture failed to examine Plaintiff's complete tax returns including the Schedules F and also failed to notify Plaintiff of the absence of those documents in the record in a timely manner. Plaintiff wishes to have the record complete so that his application may be properly examined and considered. Defendant has failed to meet the threshold of reasonable inquiry by not investigating beyond Mr. Wooten's application, not notifying Mr. Wooten of the absence of critical information, and ignoring his attempts to provide notice of these discrepancies upon appeal. As a result, Agriculture's final TAA determination relied solely on the original TAA application with no evidence of any investigation or analysis to substantiate Plaintiff's claim. Agriculture's inaction demonstrates that it was uninterested in determining the actual facts of this case. That lack of institutional interest did not meet the reasonable inquiry threshold.

V

Conclusion

For the reasons stated above, Plaintiff's Motion is granted.



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